United States Court of Appeals

for the Second Circuit

APPENDIX

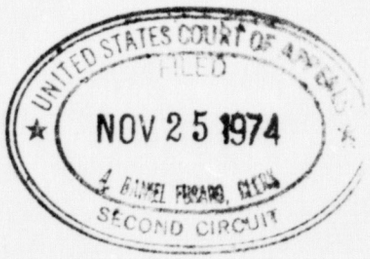
ORIGINAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

74-2169

ELMER BERNSTEIN, CHARLES ALBERTINE, JEFF ALEXANDER, PAUL BEAVER, ALAN BERGMAN, MARILYN BERGMAN, BENNY CARTER, ALEXANDER COURAGE, LUCHIE DE JESUS, GEORGE DEL BARRIO, ROBERT DRASNIN, JACK ELLIOTT, RAY EVANS, PERCY FAITH, RALPH FERRARO, JERRY FIELDING, SIDNEY FINE, CHARLES FOX, JERRY FRIED, HERSCHEL BURKE GILBERT, NORMAN GIMBEL, ERNEST GOLD, WILLIAM GOLDENBERG, JOHN GREEN, DAVID GRUSIN, EARL HAGEN, ARTHUR HAMILTON, MARVIN HAMLISCH, RICHARD HAZARD, MAURICE JARRE, J.J. JOHNSON, QUINCY JONES, FRED KARLIN, IRWIN KOSTAL, TYLWYTH KYMRY, PHILLIP LAMBRO, MEL LEVEN, JAY LIVINGSTON, HENRY MANCINI, EDDY L. MANSON, RICHARD MARKOWITZ, GREIG MC RITCHIE, GILBERT MELLE, VIC MIZZY, JOSEPH MULLENDORE, LYN MURRAY, LARRY ORENSTEIN, JOHN PARKER, STUART PHILLIPS, ROBERT O. RAGLAND, DAVID RAKSIN, NELSON RIDDLE, DAVID ROSE, MILTON ROSEN, MILTON SHORTY ROGERS, GEORGE ROMANIS, LEONARD ROSENMAN, WALTER SCHARF, LALO SCHIFRIN, NATHAN SCOTT, BERT A. SHEFTER, RICHARD M. SHERMAN, ROBERT B. SHERMAN, LEO SHUKEN, FRED STEINER, MORTON STEVENS, JOHN ANDREW TARTAGLIA, DUANE TATRO, GEORGE C. TIPTON, DON WOLF, AL WOODBURY, ON BEHALF OF THEMSELVES, AND ALL OTHER PERSONS SIMILARLY SITUATED,

Appellants,



JOINT APPENDIX

(Cover Page 1)

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PAGINATION AS IN ORIGINAL COPY

-against-

UNIVERSAL PICTURES, INC., TWENTIETH CENTURY FOX FILM, INC. PARAMOUNT PICTURES CORPORATION, METRO-GOLDWYN-MAYER, INC., WARNER BROS. - SEVEN ARTS, INC., COLUMBIA PICTURES INDUSTRIES, INC., WALT DISNEY PRODUCTIONS, INC., UNITED ARTISTS CORPORATION, COLUMBIA BROADCASTING SYSTEM, INC., AMERICAN BROADCASTING COMPANIES, INC., NATIONAL BROADCASTING COMPANY, INC., TRANSAMERICA CORPORATION, GULF & WESTERN INDUSTRIES, INC., KINNEY SERVICES INC., MCA, INC. AND THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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FOR THE SECOND CIRCUIT

ELMER BERNSTEIN et al.,

Appellants,

-against-

UNIVERSAL PICTURES, INC. et al.,

Appellees.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
NEW YORK.

CASE NO. 72 Civ. 542

JUDGE Brieant

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PLAINTIFFS' COMPLAINT

(Reproduced herein at pages 9a through 35a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ELMER BERNSTEIN, CHARLES ALBERTINE, JEFF ALEXANDER, PAUL BEAVER, ALAN BERGMAN, MARILYN BERGMAN, BENNY CARTER, ALEXANDER COURAGE, LUCHIE DE JESUS, GEORGE DEL BARRIO, ROBERT DRASNIN, JACK ELLIOTT, RAY EVANS, PERCY FAITH, RALPH FERRARO, JERRY FIELDING, SIDNEY FINE, CHARLES FOX, JERRY FRIED, HERSCHEL BURKE GILBERT, NORMAN GIMBEL, ERNEST GOLD, WILLIAM GOLDENBERG, JOHN GREEN, DAVID GRUSIN, EARL HAGEN, ARTHUR HAMILTON, MARVIN HAMLISCH, RICHARD HAZARD, MAURICE JARRE, J. J. JOHNSON, QUINCY JONES, FRED KARLIN, IRWIN KOSTAL, TYLWYTH KYMRY, PHILLIP LAMBRO, MEL LEVEN, JAY LIVINGSTON, HENRY MANCINI, EDDY L. MANSON, RICHARD MARKOWITZ, GREIG MC RITCHIE, GILBERT MELLE, VIC MIZZY, JOSEPH MULLENDORE, LYN MURRAY, LARRY ORENSTEIN, JOHN PARKER, STUART PHILLIPS, ROBERT O. RAGLAND, DAVID RAKSIN, NELSON RIDDLE, DAVID ROSE, MILTON ROSEN, MILTON SHORTY ROGERS, GEORGE ROMANIS, LEONARD ROSENMAN, WALTER SCHARF, LALO SCHIFRIN, NATHAN SCOTT, BERT A. SHEFTER, RICHARD M. SHERMAN, ROBERT B. SHERMAN, LEO SHUKEN, FRED STEINER, MORTON STEVENS, JOHN ANDREW TARTAGLIA, DUANE TATRO, GEORGE C. TIPTON, DON WOLF, AL WOODBURY, ON BEHALF OF THEMSELVES, AND ALL OTHER PERSONS SIMILARLY SITUATED,

Plaintiffs,

- against -

UNIVERSAL PICTURES, INC., TWENTIETH CENTURY FOX FILM, INC., PARAMOUNT PICTURES CORPORATION, METRO-GOLDWYN-MAYER, INC., WARNER BROS. - SEVEN ARTS, INC., COLUMBIA PICTURES INDUSTRIES, INC., WALT DISNEY PRODUCTIONS, INC., UNITED ARTISTS CORPORATION, COLUMBIA BROADCASTING SYSTEM, INC., AMERICAN BROADCASTING COMPANIES, INC., NATIONAL BROADCASTING COMPANY, INC., TRANSAMERICA CORPORATION, GULF & WESTERN INDUSTRIES, INC., KINNEY SERVICES INC., MCA, INC., AND THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS,

Defendants.

- x

72 Civil

COMPLAINT

Class Action

Plaintiffs through their attorneys, Battle, Fowler, Stokes and Kheel, and Zissu, Marcus and Stein, bring this civil action against the defendants above named and complain and allege as follows:

Jurisdiction

1. Jurisdiction of this Court is invoked and this action is brought under Sections 4 and 16 of the Act of Congress of October 14, 1914 entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," as amended (15 U.S.C. Sections 15, 26), commonly known as the Clayton Act, to prevent and restrain violations by the defendants and each of them, as hereinafter alleged, of Sections 1 and 2 of the Act of Congress of July 2, 1890 entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (15 U.S.C. Sections 1, 2), commonly known as the Sherman Act, and to secure injunctive relief and recover damages as trebled for injuries to plaintiffs by reason of such violations.

Class Action

2. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated. As individual composers and lyricists, the plaintiffs will fairly and adequately protect the interests of the class consisting of all persons who are engaged or have engaged in composing music or writing lyrics for motion pictures or television shows. The class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to all members of the class. The plaintiffs' claims are

typical of the claims of the class. This action is properly maintainable as a class action under Rule 23(b) (1) and (2) of the Federal Rules of Civil Procedure.

Definitions

3. (a) "Motion picture" is a filmed production designed primarily for exhibition in a motion picture theater.

(b) "Television show" is a taped or filmed production designed primarily for exhibition on television.

(c) "Producer" is a person engaged in the production of motion pictures or television shows.

(d) "Composer" or "lyricist" is a person who creates original music or lyrics for a motion picture or television show.

(e) A "musical composition" (and "score") is original music and/or lyrics composed for a motion picture or television show. Such music and/or lyrics may consist of one or more themes and songs as well as background scoring. A full motion picture score usually includes 30 to 60 minutes of music.

(f) "Publication" is the means by which music or lyrics is exploited, promoted and disseminated through various media resulting in sales and performances and producing fees and royalties that accrue to the benefit of the composer and publisher.

(g) "Performance" of the musical composition or any part thereof means performance of the music or lyrics through exhibition of the motion picture or television show in theaters or on television anywhere in the world and any public performance in any other manner anywhere in the world.

(h) "Performing rights societies" are membership or contractual organizations which collect and distribute performance fees to composers and lyricists and publishers. These socities exist solely for the purpose of protecting the writers' and publishers' interest in such fees.

(i) "Publication fees" or "royalties" are gained through the sale of recordings, other mechanical and electronic reproductions, printed sheet music, arrangements, orchestrations and other materials or musical works derived from the composition.

(j) "Performance fees" are earned through the public performance of the music or lyrics anywhere in the world. These performance fees are collected and distributed by performing rights societies. Performance fees are not paid for exhibition of a motion picture in motion picture theaters within the United States.

(k) "Publisher is a person or corporation engaged in publishing, exploiting, promoting and disseminating music and lyrics.

(l) "Derivative works" are musical works such as orchestral suites or band, choral or orchestral arrangements derived from the musical score or composition created originally for a motion picture or television show.

(m) "Synchronization rights" are the rights to use a musical score or composition in the sound track of a motion picture or television show.

(n) "Individual contract" is the contract be tween a composer or lyricist and producer pursuant to which the composer or lyricist undertakes to create original music

or lyrics for a motion picture or television show. The musical composition is then synchronized into the motion picture or television show for exhibition in motion picture theaters or on television.

(o) "Standard terms" are those terms defendants insist on including in every individual contract as preconditions to contracting with composers or lyricists. These standard terms include but are not limited to the following: (1) granting the producer all right and title to the musical composition in perpetuity; (2) empowering the producer to copyright the musical composition in its own name as author; (3) authorizing the producer to assign any or all of these rights in the musical composition to a publisher of producer's choice, generally owned and/or controlled by the producer with the express provision that neither the producer nor the publisher shall have any obligation to publish, record, reproduce or otherwise exploit any musical composition, and (4) thereby automatically granting the producer 50% of all performance fees collected and distributed by the performing rights societies for the performance of the musical composition in connection with exhibition of the motion picture or television show in foreign countries or on television plus 50% of all performance fees for all public performances of the music or lyrics in any other manner anywhere in the world.

Description of the Plaintiffs

4. Each of the plaintiffs is a musical composer or lyricist engaged in the business of writing original music

and/or lyrics for motion pictures and television shows. Each plaintiff is widely recognized as an accomplished composer or lyricist. Among the plaintiffs are several of the most outstanding and successful composers and lyricists acknowledged throughout the world for their talents and achievements. Each plaintiff has contracted with one or more of the defendants for the composition of music or lyrics for a motion picture or television show.

5. There are approximately 180 individuals currently active as composers or lyricists for motion pictures and television. During the past ten years approximately 300 other individuals have worked as composers or lyricists for motion pictures or television shows. Since 1928 when sound was introduced to motion pictures, approximately 10,000 musical scores have been composed for motion pictures, of which more than 80% have been composed for the producers named as defendants; and tens of thousands of scores have been composed for television productions of which nearly all were written for shows produced by the above named defendants.

6. Most of the plaintiffs and most of the members of the class are members of the Composers and Lyricists Guild of America, a membership corporation organized and existing under the laws of the State of California which represents the common interests of persons engaged as composers and lyricists for motion pictures and television. Plaintiffs organized this Guild as a response to the prior organization and joint action of defendants and in an effort to meet the defendants' vastly superior economic power.

7. During his years as an active composer or lyricist, each plaintiff has attempted to secure and retain the title to the music or lyrics he has created, the right to

copyright the music or lyrics in his own name, and rights to publish and exploit his compositions through a publisher of his own choice in order to realize the full commercial and artistic value of his work but throughout this period each has been unable with rare exception to secure these rights, exploit his compositions, and realize fully the value of his work because of the wrongful conduct and acts of the defendants, hereinafter described.

Description of Defendants

On information and belief:

8. Universal Pictures, Inc., is a Corporation organized and existing under the laws of the State of Delaware with its principal place of business at 100 Universal City, California, with an office at 445 Park Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures and television shows in interstate commerce, either directly or through subsidiary or associated companies, and transacts business within the Southern District of New York.

9. MCA, Inc., is a Corporation organized and existing under the laws of the State of Delaware with its principal place of business at 100 Universal City, California, with an office at 445 Park Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures and television shows in interstate commerce, either directly or through subsidiary or associated companies, and transacts business within the Southern District of New York.

10. Twentieth Century Fox Film, Inc. is a Corporation organized and existing under the laws of the State of Delaware with its principal place of business at 444 West 56th Street, New York, New York, and is engaged in the

business of producing and distributing motion pictures and television shows in interstate commerce, either directly or through subsidiary or associated companies and transacts business within the Southern District of New York.

11. Paramount Pictures Corporation is a Corporation organized and existing under the laws of the State of Delaware with its principal place of business at One Gulf and Western Plaza, New York, New York, and is engaged in the business of producing and distributing motion pictures and television shows in interstate commerce, either directly or through subsidiary or associated companies and transacts business within the Southern District of New York.

12. Metro-Goldwyn-Mayer, Inc. is a Corporation organized and existing under the laws of the State of Delaware with its principal place of business at 10202 W. Washington Blvd., Culver City, California, with an office at 1350 Sixth Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures and television shows in interstate commerce, either directly or through subsidiary or associated companies and transacts business within the Southern District of New York.

13. Warner Bros. - Seven Arts Inc., is a Corporation organized and existing under the laws of the State of Delaware with its principal place of business at 200 Park Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures and television shows in interstate commerce, either directly or through subsidiary or associated companies and transacts business within the Southern District of New York.

14. Columbia Pictures Industries, Inc. is a Corporation organized and existing under the laws of the State of

Delaware with its principal place of business at 711 Fifth Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures and television shows in interstate commerce, either directly or through subsidiary or associated companies and transacts business within the Southern District of New York.

15. Walt Disney Productions, Inc. is a Corporation organized and existing under the laws of the State of California with its principal place of business at 500 So. Buena Vista Street, Burbank, California, with an office at 477 Madison Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures and television shows in interstate commerce, either directly or through subsidiary or associated companies and transacts business within the Southern District of New York.

16. United Artists Corporation is a Corporation organized and existing under the laws of the State of Delaware with its principal place of business at 729 Seventh Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures and television shows in interstate commerce, either directly or through subsidiary or associated companies and transacts business within the Southern District of New York.

17. Columbia Broadcasting System, Inc. is a Corporation organized and existing under the laws of the State of New York with its principal place of business at 51 West 52nd Street, New York, New York, and is engaged in the business of producing and distributing motion pictures and television shows in interstate commerce, either directly or through subsidiary or associated companies and transacts business within the Southern District of New York.

18. American Broadcasting Companies, Inc. is a Corporation organized and existing under the laws of the State of New York with its principal place of business at 1330 Avenue of the Americas, New York, New York, and is engaged in the business of producing and distributing motion pictures and television shows in interstate commerce, either directly or through subsidiary or associated companies and transacts business within the Southern District of New York.

19. National Broadcasting Company, Inc. is a Corporation organized and existing under the laws of the State of Delaware with its principal place of business at 30 Rockefeller Plaza, New York, New York, and is engaged in the business of producing and distributing motion pictures and television shows in interstate commerce, either directly or through subsidiary or associated companies and transacts business within the Southern District of New York.

20. Transamerica Corporation is a Corporation organized and existing under the laws of the State of Delaware with its principal place of business at 701 Montgomery Street, San Francisco, California, and has an agent and transacts business in the Southern District of New York and controls United Artists Corporation.

21. Gulf and Western Corporation is a Corporation organized and existing under the laws of the State of Delaware with its principal place of business at One Gulf and Western Plaza, New York, New York, and transacts business in the Southern District of New York and controls Paramount Pictures Corporation.

22. Kinney Services Inc. is a Corporation organized and existing under the laws of the State of New York with its principal place of business at 711 Fifth Avenue,

New York, New York, and transacts business in the Southern District of New York and controls Warner Bros. - Seven Arts, Inc.

23. The Association of Motion Pictures and Television Producers is a membership corporation organized and existing under the laws of the State of California with its principal place of business at 8480 Beverly Boulevard, Hollywood, California, and represents approximately 68 motion picture and television producers and transacts business in the Southern District of New York.

24. Each of the defendants transacts business within the Southern District of New York. The unlawful acts hereinafter alleged and described were and are planned, carried out and made effective, in part, within the Southern District of New York. The interstate trade and commerce involved as hereinafter described is carried out, in part, within the Southern District of New York.

Nature of the Trade and Commerce Involved

25. The defendants are the major producers of first class feature motion pictures and taped or filmed television shows. As producers, they are responsible for all aspects of each motion picture or television show including financing and budget control, retaining creative artists, technical personnel and other facilities, supervising production and ultimately distributing the product. Among other responsibilities, defendants contract with plaintiffs to create music or lyrics for motion pictures and television shows. Defendants directly and through subsidiaries supply motion picture and television shows to virtually every community in the nation and to foreign countries. These motion pictures

and television shows contain music and lyrics composed by plaintiffs. Defendants constantly and continuously transmit or cause to be transmitted these motion pictures and television shows across boundaries of the various states and the District of Columbia and across national boundaries.

26. Original music is an important and integral part of most motion pictures and television shows. A musical composition may consist of a number of themes and songs and background scoring. To include original music, a producer must retain a composer with the special creative skills, knowledge and expertise to write music which fits the mood and tone of the motion picture or television show. The same is true of lyricists.

27. The composer's or lyricist's potential compensation consists of a fee plus a share of the proceeds collected by performing rights societies for the exhibition of the motion picture or television show on television or in motion picture theaters outside the United States or for live performances of the composition anywhere in the world and a snare of the proceeds if the music is published or exploited in any other way.

28. In the music industry outside of motion pictures and television shows, the composer or lyricist like any artist traditionally owns the music or lyrics he creates. He seeks out a publisher of his choice in order to bring the music or lyrics to the public through dissemination by various means and is given certain recapture and other rights if the publisher fails to exploit the music or lyrics. Before the advent of mass communications media, the primary method of public dissemination was through printed sheet music and live public performances.

Today dissemination may be achieved through various mass communications media including recordings, other mechanical and electronic reproductions, and through television and radio performances. The composer or lyricist contracts with a publisher to promote the music or lyrics to achieve the greatest dissemination through all of these methods. The common practice is for the composer or lyricist to share the fees from publication and performance with the publisher. Publication fees are gained through the sale of recordings, other mechanical and electronic reproductions, printed sheet music, arrangements, orchestrations, and other materials. Performance fees are earned through the public performance of the music anywhere in the world. These performance fees are collected and distributed by performing rights societies which exist solely for the purpose of protecting the creator's and publisher's interest in such fees. The performing rights societies carry out these functions by monitoring performances, collecting the fees and distributing them to their members according to established ratings.

29. In the motion picture and television industry, the producers understandably seek and secure the right to synchronize the music or lyrics into the film for performance in connection with the exhibition of the motion picture or television show. Their interest in the music or lyrics stems from this fundamental purpose. Their efforts to promote and exploit the music or lyrics are designed to enhance not the musical composition but the value of the motion picture or television show. Thus, they insist on the power to impose any restriction on the use of the music or lyrics they believe necessary to protect the motion picture or television

show. After their fundamental purpose has been served, their interest in exploiting the music or lyrics apart from the motion picture or television show invariably diminishes to the point of extinction. Their time and effort is devoted instead to new motion pictures and television shows. Nor do they expect their assignee-publishers to assume any responsibility for exploiting the music or lyrics. In fact, they are expressly relieved of any obligation to exploit the musical compositions. Yet, many uses remain for the music or lyrics unrelated to the motion picture or television show. In addition to a central theme or song which may be exploited there are commonly many other themes and songs which may readily be exploited as songs in themselves or by development by the composer as orchestral, band or choral arrangements, symphonic suites suitable for concert hall performance arrangements for various dance media or other derivative works. For the composer or lyricist to realize fully the potential value of his work, every advantage must be taken to make use of the music or lyrics and to disseminate it to the available audience.

30. In the motion picture and television industry, the producers enter into contracts with individual composers or lyricists. The relationship they have with these artists is shaped primarily by certain standard terms they insist on including in the individual contracts. In addition, since 1960, the producers have insisted that these standard terms be set forth in a "Minimum Basic Agreement" between defendant Association of Motion Picture and Television Producers and the Composers and Lyricists Guild of America.

31. The defendants, through unlawful acts described more fully below, have made it impossible for a composer or lyricist to exploit his work and receive full value because they have agreed and combined to refuse to contract with any composer or lyricist who does not agree to certain standard terms including granting to the producer not only the right to synchronize the composition for the motion picture or television show but all right and title in the music or lyrics in perpetuity. They also insist that the composer or lyricist surrender all rights to publish and exploit the work to a publisher selected by the producer, invariably a publisher owned and/or controlled by the producer. These standard terms imposed on composers or lyricists specifically provide that the producer or its captive publisher shall have no obligation to publish, record, reproduce or otherwise exploit any musical composition. Under these standard terms imposed by agreement of the defendants, the producer becomes the registered copyright author.

32. By virtue of these standard terms imposed upon the composer or lyricist, the producer gets 50% of the fees collected by performing rights societies for exhibition of the film abroad or on television or for live performance of the composition anywhere in the world even though he is not required by the terms of the agreement to perform any publishing function and can restrict any use of the composition if he deems such restriction necessary to protect the motion picture or television show. In addition, the composer or lyricist must surrender all rights to publish, use or

exploit the work in ways unrelated to the motion picture or television show for which it is originally created. If the producer fails to take advantage of opportunities to exploit and make use of the composition outside the motion picture or television show, then the composer or lyricist loses whatever value his music holds, a value which is calculable on the basis of the experience in those rare cases where a composer or lyricist has retained these rights, has exploited the composition and has realized its value. Since the producer, or its subsidiary publisher, owns the publication rights and holds the title and copyright to the composition, there is no way the composer or lyricist can take the work to another publisher who will exploit it. Defendants have unlawfully imposed these standard terms on all composers and lyricists as a condition of writing music or lyrics for motion pictures or television shows. Producers have consistently failed to exploit and make use of plaintiffs' music and lyrics they own and control through means unrelated to the motion picture or television show with the result that the composers and lyricists are deprived of the value, economic and artistic, of countless musical compositions they have created. In this way, the producers also deprive the public of these compositions.

OFFENSES CHARGED

COUNT I

Combination and Conspiracy in Restraint of Trade

33. For many years prior to the date of this complaint and continuing up to this day, defendants wilfully,

unreasonably and unlawfully have formed and carried out an agreement, combination and conspiracy to unduly, unreasonably and directly restrain trade in the purchase and sale of musical compositions and services of composers and lyricists for motion pictures and television shows throughout the United States and many foreign countries in violation of Section 1 of the Sherman Act.

34. This unlawful combination and conspiracy has consisted of a continuing agreement or combination or conspiracy and concerted activity among defendants to refuse to contract with composers or lyricists except upon standard terms which include but are not limited to the following:

(a) That the composer or lyricist relinquish all right and title to the composition in perpetuity.

(b) That the composer or lyricist empower the producer to copyright the composition in its own name as author.

(c) That the composer or lyricist grant all publication rights to the producer or a publisher selected by the producer, thereby relinquishing 50% of the performance fees collected by the performing rights societies which accrue as a result of the exhibition of the motion picture on television or in motion picture theaters outside the United States or any other public performance of the music.

(d) That the composer or lyricist give up all rights to publish, exploit and use the composition

outside of the motion picture or television show to the producer or to a publisher of the producer's choice which is generally a subsidiary controlled by the producer, and which is specifically relieved by the standard terms of any obligation to publish, record, reproduce or otherwise exploit the composition.

35. This agreement, combination or conspiracy has effectively interfered with the freedom of producers to offer varying terms to composers regarding title and copyright in the music, performance rights and publication rights. It has, in this regard, suppressed all competition among producers for musical compositions, and unlawfully restrained the composers and lyricists in their creative activities.

36. Defendants have systematically refused and failed to take advantage of opportunities to exploit the music or lyrics they own in ways unrelated to the exhibition of the motion picture or television show while failing to promote and exploit the musical composition to enhance the value of the composition itself. Defendants thereby systematically have restrained all members of the plaintiffs' class from realizing the potential value of their music and lyrics and they have thus deprived the public of access to such musical compositions.

37. Defendants have individually as well as collectively refused to contract with individual composers or lyricists except upon the standard terms described above. Each of the defendants knows that the others systematically refuse to retain any composer or lyricist who does not accept the standard terms described abcve. In the absence of this

knowledge, the individual defendants would not uniformly and systematically have insisted on acceptance of the standard terms by virtually every composer and lyricist. The purpose of this concerted refusal is to limit and stifle competition among the defendants for the services of composers and lyricists. Acting through the Association of Motion Picture and Television Producers, the defendants have formalized this unlawful agreement, combination and conspiracy by compelling the inclusion of the standard terms in the "Minimum Basic Agreement" covering all composers and lyricists, the terms of which are incorporated into the individual contract imposed on composers and lyricists.

38. The defendants have agreed and conspired and combined among themselves to impose these standard terms at many times and places over many years.

39. Plaintiffs have persistently tried to secure the opportunity to exploit their compositions and to obtain the opportunity to exploit the rights to publish their work but the defendants have persistently refused to modify the terms they uniformly impose on the composers and lyricists.

40. Defendants have combined, conspired and agreed to restrain trade.

41. Defendants have violated Section 1 of the Sherman Act.

COUNT II

Monopolization and Attempts to Monopolize

42. Defendants produce more than 80% of the first class feature motion pictures and virtually all of the filmed or taped television shows produced in the United States.

43. Defendants directly or through subsidiary companies own music publishing companies which control more than 90% of the film related music publishing industry.

44. For many years defendants individually and in combination by agreement among themselves have systematically refused to retain any individual composer or lyricist unless that individual gives up all right and title in the composition in perpetuity, thereby relinquishing all publication rights to the producer who is specifically given the right to assign said rights to a publisher of its choice, generally a subsidiary owned and/or controlled by the producer. These publishers are specifically relieved of any obligation to exploit the composition or perform any publishing functions except to collect fees from the performing rights societies which are paid to them notwithstanding the absence of any effort on their part to exploit the musicial composition.

45. Because of this compulsory assignment to the producer's publisher, composers and lyricists are restrained from promoting their compositions through other publishers who would be able to use and exploit the music.

46. Defendants' publishing subsidiaries possess and exercise the power to exclude competition from the motion picture and television music publishing industry.

47. The defendants have by means of the individual and collective practices described above perpetuated control by their wholly owned publishing subsidiaries of the motion picture and television music publishing industry.

48. By their individual and collective practices described above, defendants have prevented entry of new publishing firms including independent music publishers and some plaintiffs who are ready to enter into the motion picture and television music publishing industry.

49. Many plaintiffs have been ready and willing to enter the motion picture and television music publishing industry. Had they entered, many of them would have acted as publishers not only for themselves but also for other composers and lyricists, thereby creating a far more competitive motion picture and television music publishing industry. Had defendants not monopolized this industry, those few composers and lyricists who do their own publishing would have been able to expand their publishing activities.

50. By their individual and collective practices described above, defendants have attempted to monopolize and have monopolized the motion picture and television music publishing industry.

51. The individual and collective practices described above have violated Sections 1 and 2 of the Sherman Act.

COUNT III

Further Restraints of Trade

52. As more fully described above, each individual defendant and all of the defendants in concert have insisted on the surrender of all right and title in the musical composition and all publication rights as a condition to contracting for a musical composition for synchronization and use in connection with a motion picture or television show.

53. Each defendant and all of them have refused to contract for the purchase of synchronization and performance rights in connection with motion pictures and television shows without contracting also for all rights to publish and exploit the music and lyrics.

54. By their individual and collective practices described above, defendants have restrained trade in musical compositions and the services of composers and lyricists.

55. By their individual and collective practices described above, defendants have sought to monopolize and have monopolized the motion picture and television music publishing industry.

56. The individual and collective practices described above have violated Sections 1 and 2 of the Sherman Act.

Effects of Unlawful Practices

57. The result of these unlawful agreements and practices by defendants is to prevent each composer and lyricist from writing for motion pictures or television shows unless he surrenders title to his work and the copyrights therein, characterizes himself expressly as an employee-for-hire, assigns publication rights to the producer, thereby relinquishing 50% of the performance rights earned from exhibition on television or in theaters outside the United States or from other public performances anywhere in the world, and gives up his own opportunity to exploit the musical composition outside the motion picture or television show through a publisher of his own choice. By imposing these terms uniformly and by agreement and concerted action on all members of the class, defendants have limited competition among producers and music publishers and restrained the composers' and lyricists' capacity to realize the value of their work, both in terms of economic rewards and artistic satisfaction through broad dissemination of the music to the public.

58. In each of thousands of cases, a composer or lyricist has been compelled to accept the terms and surrender rights to his composition as described above in order to write music or lyrics for motion pictures and television shows. In each of these cases the individual thereby gave up the opportunity to realize the full value of his musical composition by assigning publication rights to an independent publisher who would agree to make an effort to realize its value through recordings, other mechanical and electronic reproductions, sheet music, arrangements and other materials. In each of these cases, the producer and its assignee-publisher has refused and failed to make use of the musical composition by promoting it and enhancing its value outside of the motion picture or television show. Yet by virtue of these standard terms imposed on composers and lyricists, the defendants through their publishers reap substantial payments in performance fees without having to discharge any publishing function, thereby depriving plaintiffs of a substantial part of the value of their work. Thousands of musical compositions remain idle, unused and unexploited in the files of the defendants. By contrast, in those rare cases when an individual composer or lyricist has retained rights to publish his work, the rewards realized have been substantial.

59. The effect of defendants' agreement, conspiracy, combination and other unlawful activities has been to restrain trade in the purchase and sale of musical compositions created originally for motion pictures and television shows as well as the sale of services of composers and lyricists creating such musical compositions.

60. The effect of defendants' agreement, conspiracy, combination and other unlawful activities has been to monopolize the motion picture and television music publishing industry.

61. The domination of this industry by these defendants has significantly reduced competition. Competition in motion picture and television music publishing cannot be restored so long as music publishers are owned by defendant producers.

62. As a result of the unlawful conduct of defendants, plaintiffs have sustained injury including the following:

(a) Plaintiffs have lost the value which would have been realized by the exploitation and promotion of the music through publishers independent of the defendants and unconnected with the motion picture or television industry for uses unrelated to exhibition of the motion picture or television show such as recordings, other mechanical and electronic reproductions, orchestrations, arrangements and sheet music.

(b) Plaintiffs have often lost an opportunity to write music or lyrics for one or more of the defendants because they would not accept the standard terms because of prior agreements with other publishers.

(c) Plaintiffs have lost the value and control of the publisher's share of performance rights collected by the performing rights societies which would accrue to them or to a music publisher of

their choice if they were able to retain the title and copyrights in their compositions and therefore the right to select a publisher.

(d) Some plaintiffs have been compelled to abrogate agreements made with other publishers in order to secure work as composers or lyricists for motion picture or television producers.

(e) Some plaintiffs would enter the motion picture and televison music publishing industry but are now unable to do so because of the unlawful acts of defendants described above which make it virtually impossible for anyone but defendants to obtain the rights to publish music and lyrics created for motion pictures or television shows.

(f) Plaintiffs have been irreparably damaged.

Damages

63. As a result of the above-described unlawful acts and conduct of defendants, plaintiffs on behalf of all others similarly situated claim they have suffered loss and damage in the amount of at least $100,000,000.00.

Prayer

64. Plaintiffs pray:

(a) That summonses be issued and directed to each of the defendants commanding them to appear and answer the allegations contained in this complaint and to abide by and perform such orders and decrees as the Court may make.

(b) That the acts of defendants as alleged be adjudged and decreed to be in violation of Sections 1 and 2 of the Sherman Act.

(c) That preliminarily until final hearing and perpetually thereafter, the combinations and conspiracies of the defendants in restraint of trade be declared illegal and enjoined.

(d) That preliminarily until final hearing and perpetually thereafter the defendants be enjoined from imposing standard terms regarding the rights to publish and exploit musical compositions on all composers and lyricists.

(e) That preliminarily until hearing and perpetually thereafter, the defendants be enjoined from enforcing any contracts heretofore made or from making any new contracts having the effect of restraining plaintiffs from making use of their musical compositions or giving up rights and copyrights in the music or lyrics to the producer with an exclusive power to assign such rights to the producer's designee.

(f) That preliminarily until hearing and perpetually thereafter, the defendants' monopolization of the music publishing business be declared illegal and the defendants ordered to divest all music publishing activities and interests.

(g) That the defendants be ordered to pay to plaintiffs triple the amount of loss of damage sustained or at least $300,000,000.00 plus the costs of this litigation including reasonable attorneys' fees.

(h) That the plaintiffs be afforded such further relief as the Court shall deem just and proper.

(i) Plaintiffs hereby request trial by jury.

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ANSWER OF AMERICAN BROADCASTING COMPANIES, INC.

(Reproduced herein at pages 37a through 39a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ELMER BERNSTEIN, et al., :

Plaintiffs, :

- against - :

UNIVERSAL PICTURES, INC., et al., :

Defendants. :

- x

72 Civil 542

ANSWER

The defendant, American Broadcasting Companies, Inc., by its attorneys, Hawkins, Delafield & Wood, for its answer to the complaint herein:

1. Denies the allegations contained in paragraph 1, except admits that plaintiffs purport to bring this action pursuant to the statutes referred to in said paragraph.

2. Denies the allegations contained in paragraph 2, except admits that plaintiffs purport to bring the action as a class action.

3. Denies the allegations contained in paragraph 3, except admits that plaintiffs purport to define the words referred to in said paragraph.

4. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4, except admits that defendant contracted with one or more of the plaintiffs for the composition of music or lyrics for a motion picture or television show.

5. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 5 and 6.

6. Denies the allegations contained in paragraph 7.

7. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 8 through 17 and 19 through 23.

8. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24, except denies that it engaged in any unlawful acts.

9. Denies the allegations contained in paragraph 25, except admits that it produced certain motion pictures and filmed and taped television shows, some of which contained music and lyrics composed by some of the plaintiffs.

10. Denies the allegations contained in paragraph 26, except admits that musical compositions may consist of themes, songs and background scoring.

11. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27, except admits that composers and lyricists receive fees from performing rights societies of which they are members.

12. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28.

13. Denies the allegations contained in paragraph 29.

14. Denies the allegations contained in paragraph 30, except admits that it entered into contracts with certain individual composers and lyricists.

15. Denies the allegations contained in paragraphs 31 through 63.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

16. The complaint fails to state a claim against the defendant upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

17. This Court does not have jurisdiction of the subject matter of this action.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

18. Exclusive and primary jurisdiction of this action is vested in the National Labor Relations Board.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

19. The rights of action set forth in the complaint did not accrue within four years next before the commencement of this action.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

20. The claims set forth in the complaint come within the exceptions to the antitrust laws contained in Sections 6 and 20 of the Clayton Act and Section 1 of the Norris-LaGuardia Act, and are therefore barred.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

21. Plaintiffs have not been injured in their business or property by reason of anything forbidden in the antitrust laws.

WHEREFORE, defendant, American Broadcasting Companies, Inc., demands judgment dismissing the complaint, together with the costs and disbursements of this action.

HAWKINS, DELAFIELD & WOOD

By Clarence Frick

A Member of the Firm

Attorneys for defendant, American Broadcasting Companies, Inc.

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ANSWER OF GULF & WESTERN INDUSTRIES, INC.
AND PARAMOUNT PICTURES CORPORATION

(Reproduced herein at pages 41a through 47a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al., Plaintiffs, -against- UNIVERSAL PICTURES, INC., et al., Defendants.	ANSWER 72 Civ. 542

Defendants Gulf & Western Industries, Inc. and Paramount Pictures Corporation (hereinafter referred to as "G&W" and "Paramount"), by their attorneys Simpson Thacher & Bartlett, for their answer to the complaint herein:

1. Deny each and every allegation contained in paragraph "1" of the complaint, except admit that the complaint is purportedly brought pursuant to the statutory provisions cited in said paragraph.

2. Deny each and every allegation contained in paragraph "2" of the complaint, except admit that plaintiffs purport to bring this action as a class action.

3. Deny each and every allegation contained in paragraph "3" of the complaint, except admit that said paragraph sets forth plaintiffs' definitions of various words and phrases.

4. Deny that they have any knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraph "4" of the complaint, except Paramount admits and G&W denies that one or more of the plaintiffs have contracted with it for the composition of music or lyrics for a motion picture or television show.

5. Deny that they have any knowledge or information sufficient to form a belief with respect to the truth of each and every allegation contained in paragraphs "5," "8" through "10," "12" through "20," "22," and "28" of the complaint.

6. Deny each and every allegation contained in the last sentence in paragraph "6" of the complaint and deny that they have any knowledge or information sufficient to form a belief with respect to the truth of the rest of the allegations in paragraph "6" of the complaint, except acknowledge that the Composers and Lyricists Guild of America, Inc. represents employees in the bargaining unit covering composers of music or lyrics for motion pictures and television, and upon information and belief admit that all of the plaintiffs are members of the Composers and Lyricists Guild of America, Inc.

7. Deny each and every allegation contained in paragraphs "7", "24", "29" through "41" and "43" through "63" of the complaint.

8. Deny each and every allegation contained in paragraph "11" of the complaint, except admit that Paramount is a corporation organized and existing under the laws of the State of Delaware, maintains its principal place of business at One Gulf & Western Plaza, New York, New York, is engaged in the business of producing motion pictures and is doing business in the State of New York.

9. Deny each and every allegation contained in paragraph "21" of the complaint, except admit that G&W is a corporation organized and existing under the laws of the State of Delaware, maintains its principal place of business

at One Gulf & Western Plaza, New York, New York and is doing business in the State of New York.

10. Deny each and every allegation contained in paragraph "23" of the complaint, except upon information and belief admit that the Association of Motion Picture and Television Producers, Inc. (hereinafter referred to as the "Association") is a membership corporation organized and existing under the laws of the State of California with its only place of business at 8480 Beverly Boulevard, Hollywood, California, except that G&W denies that it is a member of the Association.

11. Deny each and every allegation contained in paragraph "25" of the complaint, except admit that Paramount produces motion pictures and filmed television shows and some of these motion pictures and television shows contain music and lyrics composed by certain of the plaintiffs.

12. Deny each and every allegation contained in paragraph "26" of the complaint, except admit that original music is used in many motion pictures and television shows, and musical compositions may consist of the creation of themes, songs, and background scoring.

13. Deny each and every allegation contained in paragraph "27" of the complaint, except admit that composers and lyricists who are members of a performing rights society customarily receive as compensation a share of the proceeds collected by such societies for the exhibition of motion pictures or television shows on television, or in motion picture theatres outside the United States, where such societies have licensing rights therein.

14. Deny each and every allegation contained in paragraph "42" of the complaint, except admit that Paramount produces motion pictures and filmed television shows.

15. Deny that plaintiffs are entitled to any of the relief requested in paragraph "64" of the complaint.

FIRST AFFIRMATIVE DEFENSE

16. The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

17. The plaintiffs' choice of venue is improper.

THIRD AFFIRMATIVE DEFENSE

18. The claims set forth in the complaint are barred by the statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

19. The Court lacks jurisdiction over the subject matter of this action.

FIFTH AFFIRMATIVE DEFENSE

20. Upon information and belief, all of the plaintiffs are members of the Composers and Lyricists Guild of America, Inc. (hereinafter referred to as the "Guild").

21. The Guild has repeatedly asserted before the National Labor Relations Board (hereinafter referred to as the "NLRB") that it represents "employees in the bargaining

unit covering composers of music or lyrics for the Motion Picture and Television Industry".

22. The Guild has repeatedly claimed, before the NLRB and elsewhere, that it is a "union".

23. Prior to June, 1960, the exact date being to the defendants unknown, the Guild has sought and engaged in collective bargaining with the producing members of the Association.

24. Since June 1, 1960, the Guild and producing members of the Association, including Paramount, have entered into collective bargaining agreements. The most recent collective bargaining agreement was executed on July 1, 1967, and provided in Paragraph 4:

> "The producer recognizes the Guild as the exclusive representative for the purpose of collective bargaining of all composers employed under and subject to this agreement."

25. This collective bargaining agreement of July 1, 1967, was extended by letter agreements to November 30, 1971.

26. Between June 1969 and January 19, 1972, the Guild and the Association engaged in numerous negotiating sessions relating to the renewal of the above-described collective bargaining agreement. During the course of these negotiations, all of the terms relating to the claims set forth in the complaint, inter alia, were discussed. At meetings held on December 27, 1971, and January 19, 1972, a Commissioner from the Federal Mediation Service was present. The Guild and the Association failed to reach agreement; and to date, a new collective bargaining agreement has not been consummated.

27. On or about November 30, 1971, the Guild filed charges with the NLRB against the Association alleging the commission of certain unfair labor practices. On or about December 1, 1971, the Association filed charges with the NLRB against the Guild alleging the commission of certain unfair labor practices. On or about March 7, 1972, the Guild withdrew its charges before the NLRB.

28. The claims set forth in the complaint have been the subject of extensive negotiations between the Guild and the Association. Since the Labor Management Relations Act of 1947, as amended (29 U.S.C. §141, et seq.) provides a procedure for the prevention of certain unfair labor practices, including the failure of either party to bargain in good faith with regard to any term or condition of employment, exclusive and primary jurisdiction of the subject matter of this action is vested in the NLRB.

SIXTH AFFIRMATIVE DEFENSE

29. The claims set forth in the complaint are barred by reason of the exemptions from the antitrust and other laws provided in Section 6 of the Clayton Act (15 U.S.C. §17), Section 20 of the Clayton Act (29 U.S.C. §52), and Section 1 of the Norris-La Guardia Act (29 U.S.C. §101).

SEVENTH AFFIRMATIVE DEFENSE

30. Paramount on occasion has employed one or more of the plaintiffs for the express purpose of creating a musical composition for a motion picture. As an employer,

Paramount has the right to the ownership of the work product so created including but not limited to the ownership of all copyrights therein and all rights incident thereto unless expressly agreed otherwise.

EIGHTH AFFIRMATIVE DEFENSE

31. Plaintiffs have not been injured in their business or property by reason of anything forbidden in the antitrust laws.

NINTH AFFIRMATIVE DEFENSE

32. Plaintiffs, by their prior conduct, are estopped individually and collectively from asserting their claims herein.

WHEREFORE, defendants Gulf & Western Industries, Inc., and Paramount Pictures Corporation demand judgment dismissing the complaint, together with the costs and disbursements of this action, including counsel fees and for such other and further relief as to the Court may seem just and proper.

SIMPSON THACHER & BARTLETT

By _____
(A Member of the Firm)

Attorneys for defendants
Gulf & Western Industries,
Inc. and Paramount Pictures
Corporation
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ANSWER OF MCA, INC. AND UNIVERSAL CITY STUDIOS, INC.

(Reproduced herein at pages 49a through 55a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al.,	:	
Plaintiffs,	:	ANSWER
-against-	:	72 Civ. 542
UNIVERSAL PICTURES, INC., et al.,	:	
Defendants.	:	

Defendants MCA Inc. and Universal City Studios, Inc., sued herein as Universal Pictures, Inc. (hereinafter referred to as "MCA" and "Universal"), by their attorneys Simpson Thacher & Bartlett, for their answer to the complaint herein:

1. Deny each and every allegation contained in paragraph "1" of the complaint, except admit that the complaint is purportedly brought pursuant to the statutory provisions cited in said paragraph.

2. Deny each and every allegation contained in paragraph "2" of the complaint, except admit that plaintiffs purport to bring this action as a class action.

3. Deny each and every allegation contained in paragraph "3" of the complaint, except admit that said paragraph sets forth plaintiffs' definitions of various words and phrases.

4. Deny that they have any knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraph "4" of the complaint, except Universal and MCA admit that one or more of

the plaintiffs have contracted with them, through one or more of their subsidiaries or divisions, for the composition of music or lyrics for a motion picture or television show.

5. Deny that they have any knowledge or information sufficient to form a belief with respect to the truth of each and every allegation contained in paragraphs "5," "10" through "22," and "28" of the complaint.

6. Deny each and every allegation contained in the last sentence in paragraph "6" of the complaint and deny that they have any knowledge or information sufficient to form a belief with respect to the truth of the rest of the allegations in paragraph "6" of the complaint, except acknowledge that the Composers and Lyricists Guild of America, Inc. represents employees in the bargaining unit covering composers of music or lyrics for motion pictures and television, and upon information and belief admit that all of the plaintiffs are members of the Composers and Lyricists Guild of America, Inc.

7. Deny each and every allegation contained in paragraphs "7," "24," "29" through "41," and "43" through "63" of the complaint.

8. Deny each and every allegation contained in paragraph "8" of the complaint, except admit that Universal is a corporation organized and existing under the laws of the State of Delaware, maintains its principal place of business at 100 Universal City Plaza, Universal City, California, is qualified to do business in the State of New York with an office at 445 Park Avenue, New York, New York, and is engaged in the business of producing

motion pictures or television shows through its divisions, and one of its subsidiaries distributes motion pictures.

9. Deny each and every allegation contained in paragraph "9" of the complaint, except admit that MCA is a corporation organized and existing under the laws of the State of Delaware, maintains its principal place of business at 100 Universal City Plaza, Universal City, California, is qualified to do business in the State of New York with an office at 445 Park Avenue, New York, New York, and one or more of its divisions or subsidiaries is respectively engaged in the business of either producing or distributing motion pictures or television shows.

10. Deny each and every allegation contained in paragraph "23" of the complaint, except upon information and belief admit that the Association of Motion Picture and Television Producers, Inc. (hereinafter referred to as the "Association") is a membership corporation organized and existing under the laws of the State of California with its only place of business at 8480 Beverly Boulevard, Hollywood, California.

11. Deny each and every allegation contained in paragraph "25" of the complaint, except admit that Universal, through its divisions, produces motion pictures and television shows and some of these motion pictures and television shows contain music and lyrics composed by certain of the plaintiffs.

12. Deny each and every allegation contained in paragraph "26" of the complaint, except admit that original music is used in many motion pictures and television shows, and musical compositions may consist of the creation of themes, songs, and background scoring.

13. Deny each and every allegation contained in paragraph "27" of the complaint, except admit that composers and lyricists who are members of a performing rights society customarily receive as compensation a share of the proceeds collected by such societies for the exhibition of motion pictures or television shows on television, or in motion picture theatres outside the United States, where such societies have licensing rights therein.

14. Deny each and every allegation contained in paragraph "42" of the complaint, except admit that Universal produces motion pictures and television shows.

15. Deny that plaintiffs are entitled to any of the relief requested in paragraph "64" of the complaint.

FIRST AFFIRMATIVE DEFENSE

16. The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

17. The plaintiffs' choice of venue is improper.

THIRD AFFIRMATIVE DEFENSE

18. The claims set forth in the complaint are barred by the statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

19. The Court lacks jurisdiction over the subject matter of this action.

FIFTH AFFIRMATIVE DEFENSE

20. Upon information and belief, all of the plaintiffs are members of the Composers and Lyricists Guild of America, Inc. (hereinafter referred to as the "Guild").

21. The Guild has repeatedly asserted before the National Labor Relations Board (hereinafter referred to as the "NLRB") that it represents "employees in the bargaining unit covering composers of music or lyrics for the Motion Picture and Television Industry."

22. The Guild has repeatedly claimed, before the NLRB and elsewhere, that it is a "union".

23. Prior to June, 1960, the exact date being to the defendants unknown, the Guild has sought and engaged in collective bargaining with the producing members of the Association.

24. Since June 1, 1960, the Guild and producing members of the Association have entered into collective bargaining agreements. The most recent collective bargaining agreement was executed on July 1, 1967, and provided in Paragraph 4:

> "The producer recognizes the Guild as the exclusive representative for the purpose of collective bargaining of all composers employed under and subject to this agreement."

25. This collective bargaining agreement of July 1, 1967, was extended by letter agreements to November 30, 1971.

26. Between June 1969 and January 19, 1972, the Guild and the Association engaged in numerous negotiating sessions relating to the renewal of the above-described

collective bargaining agreement. During the course of these negotiations, all of the terms relating to the claims set forth in the complaint, inter alia, were discussed. At meetings held on December 27, 1971, and January 19, 1972, a Commissioner from the Federal Mediation Service was present. The Guild and the Association failed to reach agreement; and to date, a new collective bargaining agreement has not been consummated.

27. On or about November 30, 1971, the Guild filed charges with the NLRB against the Association alleging the commission of certain unfair labor practices. On or about December 1, 1971, the Association filed charges with the NLRB against the Guild alleging the commission of certain unfair labor practices. On or about March 7, 1972, the Guild withdrew its charges before the NLRB.

28. The claims set forth in the complaint have been the subject of extensive negotiations between the Guild and the Association. Since the Labor Management Relations Act of 1947, as amended (29 U.S.C. §141, et seq.) provides a procedure for the prevention of certain unfair labor practices, including the failure of either party to bargain in good faith with regard to any term or condition of employment, exclusive and primary jurisdiction of the subject matter of this action is vested in the NLRB.

SIXTH AFFIRMATIVE DEFENSE

29. The claims set forth in the complaint are barred by reason of the exemptions from the antitrust and other laws provided in Section 6 of the Clayton Act (15

U.S.C. §17), Section 20 of the Clayton Act (29 U.S.C. §52), and Section 1 of the Norris-La Guardia Act (29 U.S.C. §101).

SEVENTH AFFIRMATIVE DEFENSE

30. Universal on occasion has employed one or more of the plaintiffs for the express purpose of creating a musical composition for a motion picture. As an employer, Universal has the right to the ownership of the work product so created including but not limited to the ownership of all copyrights therein and all rights incident thereto unless expressly agreed otherwise.

EIGHTH AFFIRMATIVE DEFENSE

31. Plaintiffs have not been injured in their business or property by reason of anything forbidden in the antitrust laws.

NINTH AFFIRMATIVE DEFENSE

32. Plaintiffs, by their prior conduct, are estopped individually and collectively from asserting their claims herein.

WHEREFORE, defendants MCA Inc. and Universal City Studios, Inc., demand judgment dismissing the complaint, together with the costs and disbursements of this action, including counsel fees and for such other and further relief as to the Court may seem just and proper.

SIMPSON THACHER & BARTLETT

By _____
(A Member of the Firm)

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ANSWER OF WARNER BROS., INC. AND
WARNER COMMUNICATIONS, INC.

(Reproduced herein at pages 57a through 63a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

ELMER BERNSTEIN, et al

Plaintiffs, ANSWER

-against-

UNIVERSAL PICTURES, INC., et al 72 Civil 542

Defendants.

- - - - - - - - - - - - - - - - - - - X

Defendants Warner Bros. Inc. (formerly known and sued herein as Warner Bros.-Seven Arts, Inc.) and Warner Communications, Inc. (successor to and sued herein as Kinney Services, Inc.) by their attorneys, Phillips, Nizer, Benjamin, Krim & Ballon, answer the complaint as follows:

1. Deny each and every allegation contained in paragraph numbered 1 of the complaint except that plaintiffs purport to bring this action pursuant to the statutes referred to in said paragraph.

2. Deny each and every allegation contained in paragraph numbered 2 of the complaint except that plaintiffs purport to bring this action as a class action.

3. Deny each and every allegation contained in paragraph numbered 3 and subsections (a) through (o) thereof except that plaintiffs purport to define the terms referred to in said paragraph as set forth therein.

4. Deny having knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraph numbered 4 of the complaint except deny the allegations in the first sentence thereof and except that one or more of the plaintiffs is a musical composer or lyricist and

one or more of the plaintiffs has contracted with defendant Warner Bros. Inc. with respect to the composition of music or lyrics for a motion picture or television show, but Warner Communications, Inc. denies that any of the plaintiffs has so contracted with it.

5. Deny knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraph numbered 5 of the complaint.

6. Deny each and every allegation contained in the second sentence of paragraph numbered 6 of the complaint and deny having knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in the first sentence of said paragraph except that upon information and belief plaintiffs at all relevant times are or have been members of the Composers and Lyricists Guild of America, a trade union representing the interests of plaintiffs as employees in collective bargaining with certain of the defendants herein.

7. Deny each and every allegation contained in paragraph numbered 7 of the complaint.

8. Deny having knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraphs numbered 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20 and 21 of the complaint.

9. Deny each and every allegation contained in paragraphs numbered 13 and 22 of the complaint except that Warner Bros. Inc. (formerly known as Warner Bros.-Seven Arts, Inc.) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 4000 Warner Boulevard, Burbank, California, and is, either itself or through subsidiaries, engaged in the business of producing and distributing motion pictures and television shows, that such distribution of motion pictures and television shows is

in interstate commerce, that it transacts business within the Southern District of New York, that Warner Communications, Inc. (successor to Kinney Services, Inc.) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 10 Rockefeller Plaza, New York, New York and transacts business in the Southern District of New York.

10. Deny each and every allegation contained in paragraph numbered 23 of the complaint except upon information and belief admit that the Association of Motion Picture and Television Producers, Inc. is a membership corporation organized and existing under the laws of the State of California with its only place of business at 8480 Beverly Boulevard, Hollywood, California, and defendant Warner Communications, Inc. avers that it is not a member of the Association of Motion Picture and Television Producers, Inc.

11. Deny the allegations of paragraph 24 except that they transact business within the Southern District of New York.

12. Deny each and every allegation contained in paragraph numbered 25 of the complaint except that Warner Bros. Inc, but not Warner Communications, Inc. produces feature motion pictures and filmed television shows, and some of these motion pictures and television shows contain music and lyrics composed by certain plaintiffs.

13. Deny each and every allegation contained in paragraph numbered 26 of the complaint except that original music is used to some extent in many motion pictures and television shows, and a musical composition may consist of a number of themes songs and background scoring.

14. Deny the allegations of paragraph 27 except that composers and lyricists who are members of a performing rights

society customarily receive as compensation a share of the proceeds collected by such societies for the exhibition of motion pictures or television shows on television or in motion picture theatres outside the United States, where such societies have licensing rights therein.

15. Deny having knowledge or information sufficient to form a belief with respect to the allegations contained in paragraph numbered 28 of the complaint.

16. Deny each and every allegation contained in paragraph numbered 29 of the complaint.

17. Deny the allegations in paragraph 30 except that Warner Bros. Inc. but not Warner Communications, Inc. sometimes enters into individual employment agreements with composers and lyricists.

18. Deny each and every allegation contained in paragraphs numbered 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41

19. Deny each and every allegation contained in paragraph numbered 42 of the complaint, except Warner Bros. Inc. but not Warner Communications, Inc. produces motion pictures and filmed television shows.

20. Deny each and every allegation contained in paragraphs numbered 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59,60, 61, 62 and 63 of the complaint.

21. Deny that plaintiffs are entitled to any of the releif requested in paragraph numbered 64 of the complaint.

FIRST AFFIRMATIVE DEFENSE

22. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

23. The Court lacks jurisdiction over the subject matter of this action.

THIRD AFFIRMATIVE DEFENSE

24. Upon information and belief, plaintiffs at all relevant times are or have been members of the Composers and Lyricists Guild of America (hereinafter the "Guild").

25. The Guild has repeatedly asserted before the National Labor Relations Board (hereinafter NLRB) that it represents "employees in the bargaining unit covering composers of music or lyrics for The Motion Picture and Television Industry".

26. The Guild has repeatedly claimed, before the NLRB and elsewhere, that it is a "union".

27. Since some time prior to June, 1960, the exact date being unknown to defendant, the Guild has sought and engaged in collective bargaining with the producing members of the Association of Motion Picture and Television Producers, Inc. (hereinafter "Association").

28. Since June 1, 1960, the Guild and producing members of the Association, including defendant, have entered into four collective bargaining agreements. The most recent collective bargaining agreement was executed on July 1, 1967 and provides in Paragraph 4:

> "The producer recognizes the Guild as the exclusive representative for the purpose of collective bargaining of all composers employed under and subject to this agreement".

29. The collective bargaining agreement of July 1, 1967 was extended by letter agreements to November 30, 1971.

30. Between June, 1969 and January 17, 1972, the Guild and the Association engaged in numerous negotiating sessions relating to the renewal of the July 1, 1967 collective bargaining agreement. During the course of these negotiations, all the terms relating to the claims set forth in the complaint, inter alia, were discussed. At meetings held on December 27, 1971 and January 1[illegible] 1972 the Federal Mediation Service was

present. The Guild and the Association failed to reach agreement; and to date a new collective bargaining agreement has not been consummated.

31. On or about November 30, 1971, the Guild filed charges with the NLRB against The Association alleging the commission of certain unfair labor practices, which charges, however, were thereafter withdrawn. On or about December 1, 1971, the Association filed charges with the NLRB against the Guild alleging the commission of certain unfair labor practices.

32. The claims set forth in the complaint have been the subject of extensive negotiations between the Guild and the Association. Since the Labor Management Relations Act of 1947, as amended (29 U.S.C. §141, et seq.) provides a procedure for the prevention of certain unfair labor practices, including the failure of either party to bargain in good faith with regard to any term or condition of employment, exclusive and primary jurisdiction of the subject matter of this action is vested in the NLRB.

FOURTH AFFIRMATIVE DEFENSE

33. The claims set forth in the complaint are barred by reason of the exemptions from the antitrust and other laws provided in Section 6 of the Clayton Act (15 U.S.C. §17), Section 20 of the Clayton Act (29 U.S.C. §52), and Section 1 of the Norris-LaGuardia Act (29 U.S.C. §101).

FIFTH AFFIRMATIVE DEFENSE

34. All causes of action which accrued prior to February 8, 1968 are barred by the Federal Four-Year Statute of Limitations, 15 U.S.C. §15-b.

SIXTH AFFIRMATIVE DEFENSE

35. Plaintiffs have not been injured in their business or property by reason of anything forbidden in the antitruse laws.

SEVENTH AFFIRMATIVE DEFENSE

36. Defendant Warner Bros., Inc. has employed certain plaintiffs for the express purpose of creating musical compositions for motion pictures and television shows. As an employer, Warner Bros., Inc. has the right to the ownership of the work product so created, including but not limited to, the ownership of all copyrights therein, and all rights incident thereto, unless expressly agreed otherwise.

EIGHTH AFFIRMATIVE DEFENSE

37. Plaintiffs, by their prior conduct, are estopped individually and collectively from asserting their claims herein.

WHEREFORE, defendants Warner Bros., Inc. and Warner Communications, Inc. demand judgment dismissing the complaint together with costs and disbursements of this action, including counsel fees, and for such other and further relief as to the Court may seem just and proper.

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON

By _____
A Member of the Firm

Attorneys for Defendants,
Warner Bros. Inc. and Warner
Communications, Inc.
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477 Madison Avenue
New York, New York 10022
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ANSWER OF COLUMBIA PICTURES INDUSTRIES, INC.

(Reproduced herein at pages 65a through 70a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

ELMER BERNSTEIN et al

Plaintiffs, ANSWER

-against- 72 Civil 542

UNIVERSAL PICTURES, INC., et al

Defendants.

- - - - - - - - - - - - - - - - - - - X

Defendant Columbia Pictures Industries, Inc., by its attorneys, Phillips, Nizer, Benjamin, Krim & Ballon, answers the complaint as follows:

1. Denies the allegations in paragraph 1 except admits that plaintiffs purport to bring the action under the statutory provisions referred to therein.

2. Denies the allegations in paragraph 2 except admits that plaintiffs purport to bring this action as a class action.

3. Denies the allegations in paragraphs 7, 29, 31 through 41, and 43 through 63 of the complaint.

4. Denies the allegations in paragraph 3 except admits that said paragraph sets forth plaintiffs' definitions of various words and phrases.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 except denies the allegations in the first sentence thereof and admits that some of the plaintiffs have been employed as composers or lyricists by this defendant.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 5, 8 through 13, 15 through 22, and 28 of the complaint.

7. Denies the allegations in the last sentence in paragraph 6 and denies knowledge or information sufficient to form a belief as to the truth of the rest of the allegations in paragraph 6, except admits that plaintiffs at all relevant times are or have been members of the Composers and Lyricists Guild of America, a trade union representing the interests of plaintiffs as employees in collective bargaining with certain of the defendants herein.

8. Denies the allegations of paragraph 14 except admits that Columbia Pictures Industries, Inc. is a Delaware corporation with its principal place of business at 711 Fifth Avenue, New York, New York; that said corporation is engaged in the business of producing and distributing motion pictures and television programs, that some of its activities affect interstate commerce and that it transacts business within the Southern District of New York.

9. Denies the allegations in paragraph 23 except upon information and belief admits that the Association of Motion Picture and Television Producers, Inc. is a membership corporation organized and existing under the laws of the State of California with its only place of business at 8480 Beverly Boulevard, Hollywood, California.

10. Denies the allegations of paragraph 24 except admits that it transacts business within the Southern District of New York.

11. Denies the allegations of paragraph 25 except admits that it produces motion pictures and filmed television shows and some of these motion pictures and television shows contain music and lyrics composed by certain plaintiffs.

12. Denies the allegations of paragraph 26 except admits that original music is used in many motion pictures and television shows, and musical compositions may consist of the creation of themes, songs, and background scoring.

13. Denies the allegations of paragraph 27 except admits that composers and lyricists who are members of a performing rights society customarily receive as compensation a share of the proceeds collected by such societies for the exhibition of motion pictures or television shows on television or in motion picture theatres outside the United States, where such societies have licensing rights therein.

14. Denies the allegations in paragraph 30 except admits that it sometimes enters into individual employment agreements with composers and lyricists.

15. Denies the allegations in paragraph 42 except admits that it produces motion pictures and filmed television shows.

16. Denies that plaintiffs are entitled to any of the relief requested in paragraph 64 of the complaint.

FIRST AFFIRMATIVE DEFENSE

17. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

18. The Court lacks jurisdiction over the subject matter of this action.

THIRD AFFIRMATIVE DEFENSE

19. Upon information and belief, plaintiffs at all relevant times are or have been members of the Composers and Lyricists Guild of America (hereinafter the "Guild").

20. The Guild has repeatedly asserted before the National Labor Relations Board (hereinafter NLRB) that it represents "employees in the bargaining unit covering composers of music or lyrics for The Motion Picture and Television Industry".

21. The Guild has repeatedly claimed, before the NLRB and elsewhere, that it is a "union".

22. Since some time prior to June, 1960, the exact date being unknown to defendant, the Guild has sought and engaged in collective bargaining with the producing members of the Association of Motion picture and Television Producers, Inc., (hereinafter "Association").

23. Since June 1, 1960, the Guild and producing members of the Association, including defendant, have entered into four collective bargaining agreements. The most recent collective bargaining agreement was executed on July 1, 1967 and provides in Paragraph 4:

> "The producer recognizes the Guild as the exclusive representative for the purpose of collective bargaining of all composers employed under and subject to this agreement".

24. The collective bargaining agreement of July 1, 1967 was extended by letter agreements to November 30, 1971.

25. Between June 1969 and January 17, 1972, the Guild and the Association engaged in numerous negotiating sessions relating to the renewal of the July 1, 1967 collective bargaining agreement. During the course of these negotiations, all the terms relating to the claims set forth in the complaint, inter alia, were discussed. At meetings held on December 27, 1971 and January 19, 1972 the Federal Mediation Service was present. The Guild and the Association failed to reach agreement; and to date a new collective bargaining agreement has not been consummated.

26. On or about November 30, 1971, the Guild filed charges with the NLRB against the Association alleging the commission of certain unfair labor practices, which charges, however, were thereafter withdrawn. On or about December 1, 1971, the Association filed charges with the NLRB against the Guild alleging the commission of certain unfair labor practices.

27. The claims set forth in the complaint have been the subject of extensive negotiations between the Guild and the

Association. Since the Labor Management Relations Act of 1947, as amended (29 U.S.C. §141, et seq.) provides a procedure for the prevention of certain unfair labor practices, including the failure of either party to bargain in good faith with regard to any term or condition of employment, exclusive and primary jurisdiction of the subject matter of this action is vested in the NLRB.

FOURTH AFFIRMATIVE DEFENSE

28. The claims set forth in the complaint are barred by reason of the exemptions from the antitrust and other laws provided in Section 6 of the Clayton Act (15 U.S.C. §17), Section 20 of the Clayton Act (29 U.S.C. §52), and Section 1 of the Norris-LaGuardia Act (29 U.S.C. §101).

FIFTH AFFIRMATIVE DEFENSE

29. The claims set forth in the complaint are barred by the Statute of Limitations.

SIXTH AFFIRMATIVE DEFENSE

30. Plaintiffs have not been injured in their business or property by reason of anything forbidden in the antitrust laws.

SEVENTH AFFIRMATIVE DEFENSE

31. Defendant has employed certain plaintiffs for the express purpose of creating musical compositions for motion pictures or television shows. As an employer, defendant has the right to the ownership of the work product so created, including but not limited to, the ownership of all copyrights therein, and all rights incident thereto, unless expressly agreed otherwise.

EIGHTH AFFIRMATIVE DEFENSE

32. Plaintiffs, by their prior conduct, are estopped

individually and collectively from asserting their claims herein.

WHEREFORE, defendant Columbia Pictures Indistries, Inc. demands judgment dismissing the complaint, together with the costs and disbursements of this action, including counsel fees, and for such other and further relief as to the Court may seem just and proper.

PHILLIPS, NIZER, BENJAMIN, KRIM
& BALLON

By Louis Nizer
A Member of the Firm

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ANSWER OF TRANSAMERICA CORPORATION

(Reproduced herein at pages 72a through 77a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

ELMER BERNSTEIN, et al

Plaintiffs, ANSWER

-against-

UNIVERSAL PICTURES, INC., et al 72 Civil 542

Defendants.

- X

Defendant Transamerica Corporation (hereinafter "Transamerica"), by its attorneys, Phillips, Nizer, Benjamin, Krim & Ballon, answers the complaint as follows:

1. Denies the allegations in paragraph 1 except admits that plaintiffs purport to bring the action under the statutory provisions referred to therein.

2. Denies the allegations contained in paragraph 2 of the complaint, except admits that plaintiffs purport to bring this action as a class action.

3. Denies the allegations in paragraphs 7, 24 and 31 through 63 of the complaint.

4. Denies the allegations in paragraph 3 except admits that said paragraph sets forth plaintiffs' definitions of various words and phrases.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 except denies that it has entered into any contract with any of the plaintiffs for the composition of music or lyrics for a motion picture or television show.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 5, 8

through 15, 17 through 19, 21 and 22, and 26 through 30 of the complaint.

7. Denies the allegations in the last sentence in paragraph 6 and denies knowledge or information sufficient to form a belief as to the truth of the rest of the allegations in paragraph 6, except upon information and belief admits that plaintiffs at all relevant times are or have been members of the Composers and Lyricists Guild of America, a trade union representing the interests of plaintiffs as employees in collective bargaining with certain of the defendants herein.

8. Denies the allegations of paragraph 16 except admits that United Artists Corporation is a corporation organized and existing under the laws of the State of Delaware; that it maintains its principal place of business at 729 Seventh Avenue, New York, New York; that it is engaged in the business of distributing motion pictures produced by independent producers and distributing, through a subsidiary, television series; that some of its activities affect interstate commerce and it transacts business within the Southern District of New York.

9. Denies the allegations of paragraph 20 except admits that Transamerica is a corporation organized and existing under the laws of the State of Delaware, with its only place of business at 701 Montgomery Street in the City of San Francisco, State of California.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 and avers that it is not a member of the Association of Motion Picture and Television Producers, Inc.

11. Denies the allegations in paragraph 25 except upon information and belief admits that certain defendants herein, other than it, produce motion pictures and filmed television shows

and some of these motion pictures and television shows contain music and lyrics composed by certain plaintiffs.

12. Denies that plaintiffs are entitled to the relief requested in paragraph 64 of the complaint.

FIRST AFFIRMATIVE DEFENSE

13. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

14. The Court lacks jurisdiction over the subject matter of this action.

THIRD AFFIRMATIVE DEFENSE

15. Attempted service of the summons and complaint on Transamerica was made on February 10, 1972 in San Francisco, California.

16. Transamerica is not an "inhabitant" of, is not "found" and does not "transact business" in the Southern District of New York.

17. Transamerica is a corporation organized and existing under the laws of the State of Delaware, with its only place of business in San Francisco, California.

18. Transamerica is not authorized to do business in the State of New York and neither by itself nor through any agent does it transact business therein.

19. Thus, plaintiffs' attempted extraterritorial service of process at Transamerica's place of business in San Francisco was invalid under §12 of the Clayton Antitrust Act (15 U.S.C. §22) and under 28 U.S.C. §1391; and therefore, this Court lacks in personam jurisdiction over Transamerica. Moreover, under the same statutes, the venue of the action is improper as to Transamerica.

20. As a consequence of the lack of in personam jurisdiction, insufficiency of process and improper venue, the attempted service of process on Transamerica should be quashed and the complaint against Transamerica should be dismissed.

FOURTH AFFIRMATIVE DEFENSE

21. All causes of action which accrued prior to February 10, 1968 are barred by the Federal Four-Year Statute of Limitations, 15 U.S.C. §15-b.

FIFTH AFFIRMATIVE DEFENSE

22. Upon information and belief, plaintiffs at all relevant times are or have been members of the Composers and Lyricists Guild of America (hereinafter the "Guild").

23. Upon information and belief, the Guild has repeatedly asserted before the National Labor Relations Board (hereinafter NLRB) that it represents "employees in the bargaining unit covering composers of music or lyrics for the Motion Picture and Television Industry".

24. Upon information and belief, the Guild has repeatedly claimed, before the NLRB and elsewhere, that it is a "union".

25. Upon information and belief, since about June 1960, the Guild has sought and engaged in collective bargaining with the producing members of the Association of Motion Picture and Television Producers, Inc., (hereinafter "Association").

26. Upon information and belief, since June 1, 1960, the Guild and producing members of the Association, have entered into four collective bargaining agreements. The most recent collective bargaining agreement was executed on July 1, 1967 and provides in paragraph 4:

> "The producer recognizes the Guild as the exclusive representative for the purpose of

collective bargaining of all composers employed under and subject to this agreement".

27. Upon information and belief, the collective bargaining agreement of July 1, 1967 was extended by letter agreements to November 30, 1971.

28. Upon information and belief, between June 1969 and January 17, 1972, the Guild and the Association engaged in numerous negotiating sessions relating to the renewal of the July 1, 1967 collective bargaining agreement. During the course of these negotiations all the terms relating to the claims set forth in the complaint, inter alia, were discussed. At meetings held on December 27, 1971 and January 19, 1972 the Federal Mediation Service was present. The Guild and the Association failed to reach agreement; and to date a new collective bargaining agreement has not been consummated.

29. Upon information and belief, on or about November 30, 1971, the Guild filed charges with the NLRB against the Association alleging the commission of certain unfair labor practices, which charges, however, were thereafter withdrawn. On or about December 1, 1971, the Association filed charges with the NLRB against the Guild alleging the commission of certain unfair labor practices.

30. Upon information and belief, the claims set forth in the complaint have been the subject of extensive negotiations between the Guild and the Association. Since the Labor Management Relations Act of 1947, as amended (29 U.S.C. §141, et seq.) provides a procedure for the prevention of certain unfair labor practices, including the failure of either party to bargain in good faith with regard to any term or condition of employment, exclusive and primary jurisdiction of the subject matter of this action is vested in the NLRB.

SIXTH AFFIRMATIVE DEFENSE

31. The claims set forth in the complaint are barred by reason of the exemptions from the antitrust and other laws provided in Section 6 of the Clayton Act (15 U.S.C. §17), Section 20 of the Clayton Act (29 U.S.C. §52), and Section 1 of the Norris-LaGuardia Act (29 U.S.C. §101).

SEVENTH AFFIRMATIVE DEFENSE

32. Plaintiffs have not been injured in their business or property by reason of anything forbidden in the antitrust laws.

WHEREFORE, defendant Transamerica demands judgment dismissing the complaint, together with the costs and disbursements of this action, including counsel fees and for such other and further relief as to the Court may seem just and proper.

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ANSWER OF TWENTIETH CENTURY-FOX FILM CORPORATION

(Reproduced herein at pages 79a through 86a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al. On behalf of Themselves and all other persons similarly situated,	:	72 Civil Action File No. 542
Plaintiffs,	:	ANSWER
-against-	:	
UNIVERSAL PICTURES, INC., et al.,	:	
Defendants.	:	

Defendant Twentieth Century-Fox Film Corporation, by its attorneys, Royall, Koegel & Wells, for its answer to the complaint, respectfully shows to the Court and alleges:

FIRST DEFENSE

1. Answering paragraph 1 of the complaint, admits that plaintiffs seek to invoke the jurisdiction of this Court pursuant to the statutes therein alleged but denies that this defendant has violated said statutes, or any of them, or that plaintiffs are entitled to any relief whatsoever.

2. Denies the allegations contained in paragraph 2 of the complaint, except admits that plaintiffs purport to bring this action as a class action.

3. Answering paragraph 3 of the complaint, admits that said paragraph sets forth plaintiffs' definitions of various words and phrases, but denies that such definitions are full, accurate or complete or exclusive of other definitions.

4. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the complaint, except it denies the allegations contained in the first sentence thereof and except it admits that some of plaintiffs have been employed by this defendant as composers or lyricists.

5. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the complaint.

6. Denies the allegations of the last sentence in paragraph 6 of the complaint and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations thereof except admits that plaintiffs at all relevant times are or have been members of the Composers and Lyricists Guild of America, a trade union representing the interests of plaintiffs as employees in collective bargaining with certain of the defendants herein, including this defendant.

7. Denies the allegations contained in paragraph 7 of the complaint.

8. Denies the allegations contained in paragraphs 8 through 22 inclusive, of the complaint, except it admits that Twentieth Century-Fox Film Corporation is a Delaware corporation with its principal place of business at 444 West 56th Street, New York, New York; that said corporation is engaged in the business of producing and distributing motion pictures and television programs; that some of its activities affect interstate commerce and that it transacts business within the Southern District of New

York; and except admits so much of the remaining allegations as are admitted by the respective defendants to whom they are addressed.

9. Denies the allegations contained in paragraph 23 of the complaint except admits upon information and belief that the Association of Motion Picture and Television Producers, Inc. is a membership corporation organized and existing under the laws of the State of California with its only place of business at 8480 Beverly Boulevard, Hollywood, California, and it has approximately 70 motion picture and television producers as members.

10. Denies the allegations contained in paragraph 24 of the complaint, except admits that it transacts business within the Southern District of New York and that a portion of its business affects interstate commerce.

11. Denies the allegations contained in paragraph 25 of the complaint, except admits that it produces motion pictures and taped or filmed television shows and that some of said motion pictures and television shows contain music and lyrics composed by certain of the plaintiffs.

12. Denies the allegations contained in paragraph 26 of the complaint, except admits that original music is used in many motion pictures and television shows, and musical compositions may consist of the creation of themes, songs, and background scoring.

13. Denies the allegations contained in paragraph 27 of the complaint, except admits that composers and lyricists who are members of a performing rights society customarily receive as compensation a share of the proceeds

collected by such societies for the exhibition of motion pictures or television shows on television or in motion picture threatres outside the United States, where those societies have licensing rights therein.

14. Denies the allegations contained in paragraphs 28 and 29 of the complaint.

15. Denies the allegations contained in paragraph 30 of the complaint, except admits that this defendant sometimes enters into individual employment agreements with composers and lyricists.

16. Denies the allegations contained in paragraphs 31 through 41, inclusive.

17. States that it is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 42 of the complaint, except admits that it produces first class feature motion pictures and television shows.

18. Denies the allegations contained in paragraphs 43 through 63, inclusive, of the complaint.

19. In response to paragraph 64 of the complaint, states that plaintiffs are not entitled to any of the relief therein requested.

SECOND DEFENSE

20. The complaint fails to state a claim upon which relief may be granted.

THIRD DEFENSE

21. The Court lacks jurisdiction over the subject matter of this action.

FOURTH DEFENSE

22. All causes of action which accrued prior to February 7, 1968 are barred by the Federal Four-Year Statute of Limitation, 15 U.S.C. § 15-b.

FIFTH DEFENSE

23. Upon information and belief, plaintiffs at all relevant times are or have been members of the Composers and Lyricists Guild of America (hereinafter the "Guild").

24. The Guild has repeatedly asserted before the National Labor Relations Board (hereinafter "NLRB") that it represents "employees in the bargaining unit covering composers of music or lyrics for The Motion Picture and Television Industry".

25. The Guild has repeatedly claimed, before the NLRB and elsewhere, that it is a trade union.

26. Since some time prior to June, 1960, the exact date being unknown to this defendant, the Guild has sought and engaged in collective bargaining with the producing members of the Association of Motion Picture and Television Producers, Inc., (hereinafter "Association").

27. Since June 1, 1960, the Guild and producing members of the Association, including defendant, have entered into four collective bargaining agreements. The most recent collective bargaining agreement was executed on July 1, 1967 and provides in paragraph 4:

> "The producer recognizes the Guild as the exclusive representative for the purpose of collective bargaining of all composers employed under and subject to this agreement".

28. The collective bargaining agreement of July 1, 1967 was extended by letter agreements to November 30, 1971.

29. Between June, 1969 and January 17, 1972, the Guild and the Association engaged in numerous negotiating sessions relating to the renewal of the July 1, 1967 collective bargaining agreement. During the course of these negotiations, all the terms relating to the claims set forth in the complaint, inter alia, were discussed. At meetings held on December 27, 1971 and January 19, 1972 the Federal Mediation Service was present. The Guild and the Asscciation failed to reach agreement; and to date a new collective bargaining agreement has not been consummated.

30. On or about November 30, 1971, the Guild filed charges with the NLRB against the Association alleging the commission of certain unfair labor practices, which charges, however, were thereafter withdrawn. On or about December 1, 1971, the Association filed charges with the NLRB against the Guild alleging the commission of certain unfair labor practices.

31. The claims set forth in the complaint have been the subject of extensive negotiations between the Guild and the Association. Since the Labor Management Relations Act of 1947, as amended (29 U.S.C. §141, et seq.) provides a procedure for the prevention of certain unfair labor practices, including the failure of either party to bargain in good faith with regard to any term or condition of employment, exclusive and primary jurisdiction of the

subject matter of this action is vested in the NLRB.

SIXTH DEFENSE

32. The claims set forth in the complaint are barred by reason of the exemption from the antitrust and other laws contained in Section 6 of the Clayton Act (15 U.S.C. § 17), Section 20 of the Clayton Act (29 U.S.C. § 52), and Section 1 of the Norris-La Guardia Act (29 U.S.C. § 101).

SEVENTH DEFENSE

33. Plaintiffs have not been injured in their business or property by reason of any of the matters alleged in the complaint herein.

EIGHTH DEFENSE

34. Defendant has employed certain plaintiffs for the express purpose of creating a musical composition for motion pictures and television shows. As an employer, defendant has the right to the ownership of the work product so created, including but not limited to, the ownership of all copyrights therein, and all rights incident thereto, unless expressly agreed otherwise.

NINTH DEFENSE

35. Plaintiffs by their prior conduct are individually and collectively estopped from asserting the claims alleged herein.

ROYALL, KOEGEL & WELLS

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ANSWER OF UNITED ARTISTS CORPORATION

(Reproduced herein at pages 88a through 93a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

ELMER BERNSTEIN, et al

Plaintiffs, ANSWER

-against-

UNIVERSAL PICTURES, INC., et al 72 Civil 542

Defendants.

- - - - - - - - - - - - - - - - - - - X

Defendant United Artists Corporation (hereinafter "United Artists"), by its attorneys, Phillips, Nizer, Benjamin, Krim & Ballon, answers the complaint as follows:

1. Denies the allegations in paragraph 1 except admits that plaintiffs purport to bring the action under the statutory provisions referred to therein.

2. Denies the allegations contained in paragraph 2 of the complaint, except admits that plaintiffs purport to bring this action as a class action.

3. Denies the allegations in paragraphs 7, 24, and 29 through 63 of the complaint.

4. Denies the allegations in paragraph 3 except admits that said paragraph sets forth plaintiffs' definitions of various words and phrases.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 except denies that it has entered into any contract with any of the plaintiffs for the composition of music or lyrics for a motion picture or television show.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 5, 8 through 15, 17 through 19, 21, 22 and 28 of the complaint.

7. Denies the allegations in the last sentence in paragraph 6 and denies knowledge or information sufficient to form a belief as to the truth of the rest of the allegations in paragraph 6, except upon information and belief admits that plaintiffs at all relevant times are or have been members of the Composers and Lyricists Guild of America, a trade union representing the interests of plaintiffs as employees in collective bargaining with certain of the defendants.

8. Denies the allegations of paragraph 16 except admits that United Artists is a corporation organized and existing under the laws of the State of Delaware; that it maintains its principal place of business at 729 Seventh Avenue, New York, New York; that it is engaged in the business of distributing motion pictures produced by independent producers and distributing, through a subsidiary, television series; that some of its activities affect interstate commerce and it transacts business within the Southern District of New York.

9. Denies the allegations of paragraph 20 except admits that Transamerica is a corporation organized and existing under the laws of the State of Delaware, with its only place of business at 701 Montgomery Street in the City of San Francisco, State of California.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 except upon information and belief admits that the Association of Motion Picture and Television Producers, Inc. is a membership corporation organized and existing under the laws of the State of California with its only place of business at 8480 Beverly Boulevard, Hollywood, California.

11. Denies the allegations of paragraph 24 except admits that it transacts business within the Southern District of New York.

12. Denies the allegations in paragraph 25 except upon information and belief admits that certain defendants herein, other than it, produce motion pictures and filmed television shows and some of these motion pictures and television shows contain music and lyrics composed by certain plaintiffs.

13. Denies the allegations of paragraph 26 except admits that original music is used in many motion pictures and television shows, and musical compositions may consist of the creation of themes, songs, and background scoring.

14. Denies the allegations of paragraph 27 except admits that composers and lyricists who are members of a performing rights society customarily receive as compensation a share of the proceeds collected by such societies for the exhibition of motion pictures or television shows on television or in motion picture theatres outside the United States, where such societies have licensing rights therein.

15. Denies that plaintiffs are entitled to any of the relief requested in paragraph 64 of the complaint.

FIRST AFFIRMATIVE DEFENSE

16. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

17. The Court lacks jurisdiction over the subject matter of this action.

THIRD AFFIRMATIVE DEFENSE

18. Upon information and belief, plaintiffs at all relevant times are or have been members of the Composers and Lyricists Guild of America (hereinafter the "Guild").

19. Upon information and belief, the Guild has repeatedly asserted before the National Labor Relations Board

(hereinafter NLRB) that it represents "employees in the bargaining unit covering composers of music or lyrics for the Motion Picture and Television Industry".

20. Upon information and belief, the Guild has repeatedly claimed, before the NLRB and elsewhere, that it is a "union".

21. Upon information and belief, since about June 1960, the Guild has sought and engaged in collective bargaining with the producing members of the Association of Motion Picture and Television Producers, Inc., (hereinafter "Asscciation").

22. Upon information and belief, since June 1, 1960, the Guild and producing members of the Association, have entered into four collective bargaining agreements. The most recent collective bargaining agreement was executed on July 1, 1967 and provides in paragraph 4:

> "The producer recognizes the Guild as the exclusive representative for the purpose of collective bargaining of all composers employed under and subject to this agreement".

23. Upon information and belief, the collective bargaining agreement of July 1, 1967 was extended by letter agreements to November 30, 1971.

24. Upon information and belief, between June 1969 and January 17, 1972, the Guild and the Association engaged in numerous negotiating sessions relating to the renewal of the July 1, 1967 collective bargaining agreement. During the course of these negotiations, all the terms relating to the claims set forth in the complaint, inter alia, were discussed. At meetings held on December 27, 1971 and January 19, 1972 the Federal Mediation Service was present. The Guild and the Association failed to reach agreement; and to date a new collective bargaining agreement has not been consummated.

25. Upon information and belief, on or about November 30, 1971, the Guild filed charges with the NLRB against the

Association alleging the commission of certain unfair labor practices, which charges, however, were thereafter withdrawn. On or about December 1, 1971, the Association filed charges with the NLRB against the Guild alleging the commission of certain unfair labor practices.

26. Upon information and belief, the claims set forth in the complaint have been the subject of extensive negotiations between the Guild and the Association. Since the Labor Management Relations Act of 1947, as amended (29 U.S.C. § 141, et seq.) provides a procedure for the prevention of certain unfair labor practices, including the failure of either party to bargain in good faith with regard to any term or condition of employment, exclusive and primary jurisdiction of the subject matter of this action is vested in the NLRB.

FOURTH AFFIRMATIVE DEFENSE

27. The claims set forth in the complaint are barred by reason of the exemptions from the antitrust and other laws provided in Section 6 of the Clayton Act (15 U.S.C. § 17), Section 20 of the Clayton Act (29 U.S.C. § 52), and Section 1 of the Norris-LaGuardia Act (29 U.S.C. § 101).

FIFTH AFFIRMATIVE DEFENSE

28. The claims set forth in the complaint are barred by the Statute of Limitations.

SIXTH AFFIRMATIVE DEFENSE

29. Plaintiffs have not been injured in their business or property by reason of anything forbidden in the antitrust laws.

WHEREFORE, defendant United Artists demands judgment dismissing the complaint, together with the costs and disbursements of this action, including counsel fees and for such other

and further relief as to the Court may seem just and proper.

PHILLIPS, NIZER, BENJAMIN, KRIM
& BALLON

By Louis Nizer
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ANSWER OF NATIONAL BROADCASTING COMPANY, INC.

(Reproduced herein at pages 95a through 106a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al., Plaintiffs, -against- UNIVERSAL PICTURES, INC., et al., Defendants.	ANSWER ON BEHALF OF NATIONAL BROADCASTING COMPANY, INC. 72 Civ. 542

National Broadcasting Company, Inc. (hereinafter "NBC"), by its attorneys, hereby answers the complaint herein as follows:

1. Admits that plaintiffs purport to bring this action under the statutes cited in paragraph 1 of the complaint, and except as so admitted, denies the remaining allegations contained in paragraph 1, insofar as they refer to NBC, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the complaint insofar as they refer to the other defendants.

2. Admits that plaintiffs purport to bring this action on behalf of themselves and all other persons similarly situated, but denies that this action is properly maintainable as a class action under Rule 23 of the Federal Rules of Civil Procedure.

3. Admits that plaintiffs have defined the terms set out in paragraph 3 of the complaint, but denies the objective validity of said definitions, and denies the remaining allegations of said paragraph. NBC avers that it is irrelevant and immaterial to limit said definitions to filmed productions

designed primarily for exhibition in a motion picture theater and taped or filmed productions designed primarily for exhibition on television.

4. Admits that the named plaintiffs are composers or lyricists who write original music for motion pictures and television shows, and that among the plaintiffs are several composers and lyricists some of whom have been employed as composers or lyricists by NBC, but denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 4 of the complaint.

5. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the complaint.

6. Admits that most of the plaintiffs are members of the Composers and Lyricists Guild of America, and denies engaging in prior organization and joint action with the other defendants as alleged in paragraph 6 of the complaint, and denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 6 of the complaint.

7. Denies that NBC has engaged in any wrongful conduct as alleged in paragraph 7 of the complaint, and denies that any action by NBC has wrongfully prevented plaintiffs from or in any way impaired them in securing their rights, exploiting their compositions, and realizing fully the value of their work, and denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 7 of the complaint.

8-18. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the complaint.

19. Admits that NBC is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 30 Rockefeller Plaza, New York, New York and that NBC transacts business within the Southern District of New York. NBC further admits that it occasionally produces television shows, that NBC has on occasion been a member of a joint venture which produced a motion picture, that it distributes television shows for syndication, and that some of its activities affect interstate commerce, but avers that it is engaged primarily in the business of broadcasting. Except as admitted, NBC denies the allegations contained in paragraph 19 of the complaint.

20-23. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 20, 21, 22 and 23 of the complaint.

24. Admits that NBC transacts business within the Southern District of New York. Denies that NBC committed any unlawful acts as alleged and described in the complaint within the Southern District of New York or elsewhere, denies that the commercial activity described in the complaint constitutes a part of trade and commerce within the meaning of the antitrust laws, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the complaint insofar as they refer to the other defendants.

25. Admits that NBC, on those infrequent occasions when it produces a television show, is responsible for many aspects of such show, that it supplies television shows to five owned and approximately 200 affiliated television stations throughout the United States and that it supplies through syndication certain television shows, that it has contracted with some of the plaintiffs for music or lyrics for some of the television shows which it has produced, and that it transmits television shows across state and national boundaries, and except as admitted, denies the allegations contained in paragraph 25 of the complaint insofar as they refer to NBC. Further, NBC denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the complaint insofar as they refer to the other defendants.

26. Admits that to include original music in a motion picture or television show, a producer must employ or retain a composer or lyricist, and except as admitted, denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26 of the complaint.

27. Denies the allegations contained in paragraph 27 of the complaint, except admit in some instances a composer's or lyricist's potential compensation may consist of a fee and admits that composers and lyricists who are members of a performing rights society customarily receive as compensation a share of proceeds collected by such societies for the exhibition of motion pictures or television shows on television or in motion picture theaters outside the United States where those societies have licensing rights therein.

28. Admits that dissemination of music or lyrics may be achieved through various mass communications media as alleged in paragraph 28 of the complaint; and, except as admitted, denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the complaint.

29. Admits that on those infrequent occasions when it produces television shows, NBC seeks to secure the right to synchronize the music or lyrics into the tape or film for performance in connection with the exhibition of said tape or film; that its interest in the music or lyrics stems from this purpose; and that after this purpose has been served its time and effort is primarily devoted to new television shows, and except as admitted, denies the allegations of paragraph 29 of the complaint insofar as they refer to NBC and denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 of the complaint insofar as they refer to the other defendants.

30. Admits that in the motion picture and television industry, producers have occasion to enter into contracts with individual composers or lyricists, but denies the remaining allegations of paragraph 30 of the complaint insofar as they refer to NBC, and denies having knowledge or information sufficient to form a belief as to the truth of said allegations of paragraph 30 of the complaint insofar as they refer to the other defendants.

31. Denies the allegations contained in paragraph 31 of the complaint insofar as they refer to NBC and denies having

knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the complaint insofar as they refer to the other defendants.

32. Admits that in those rare cases where NBC's contracts with composers and lyricists give NBC the publishing rights in musical compositions, NBC receives 50% of the fees collected by performing rights societies for exhibition of the television show employing the composition abroad or on television or for live performances of the composition, but, except as admitted, denies the allegations contained in paragraph 32 of the complaint insofar as they refer to NBC and denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 insofar as they refer to the other defendants.

33-38. Denies the allegations contained in paragraphs 33, 34, 35, 36, 37 and 38 of the complaint insofar as they refer to NBC and denies having knowledge or information sufficient to form a belief as to the truth of said allegations insofar as they refer to the other defendants.

39. Denies that NBC has uniformly imposed any terms upon composers and lyricists or that it persistently has refused to modify such terms and denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 39 of the complaint insofar as they refer to NBC and denies having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39 of the complaint insofar as they refer to the other defendants.

40-41. Denies the allegations contained in paragraphs 40 and 41 of the complaint insofar as they refer to NBC and denies having knowledge or information sufficient to form a belief as to the truth of said allegations insofar as they refer to the other defendants.

42-43. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 42 and 43.

44. Denies the allegations contained in paragraph 44 of the complaint insofar as they refer to NBC and denies having knowledge or information sufficient to form a belief as to the truth of said allegations insofar as they refer to the other defendants.

45-48. Denies the allegations contained in paragraphs 45, 46, 47 and 48 of the complaint insofar as they refer to NBC, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 45, 46, 47 and 48 insofar as they refe. to the other defendants.

49. Denies that NBC has monopolized or participated in any monopoly, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the complaint.

50-51. Denies the allegations contained in paragraphs 50 and 51 of the complaint insofar as they refer to NBC and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 50 and 51 insofar as they refer to the other defendants.

52-53. Denies the allegations contained in paragraphs 52 and 53 of the complaint insofar as they refer to NBC and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 52 and 53 insofar as they refer to the other defendants.

54. Denies the allegations contained in paragraph 54 of the complaint insofar as they relate to NBC, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the complaint insofar as they refer to the other defendants.

55. Denies the allegations contained in paragraph 55 of the complaint insofar as they relate to NBC, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the complaint insofar as they refer to the other defendants.

56-57. Denies the allegations contained in paragraphs 56 and 57 of the complaint insofar as they refer to NBC, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 56 and 57 insofar as they refer to the other defendants.

58. Denies the allegations contained in paragraph 58 of the complaint insofar as they refer to NBC, and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the complaint insofar as they refer to the other defendants.

59-63. Denies the allegations contained in paragraphs 59, 60, 61, 62 and 63 of the complaint insofar as they refer to

NBC and denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 59, 60, 61, 62 and 63 insofar as they refer to the other defendants.

64. In response to paragraph 64 of the complaint, states that plaintiffs are not entitled to any of the relief therein requested.

FIRST AFFIRMATIVE DEFENSE

65. The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

66. The court lacks jurisdiction over the subject matter of this action.

THIRD AFFIRMATIVE DEFENSE

67. The complaint is barred in whole or in part by the applicable statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

68. For many years past plaintiffs knew or should have known of the basic facts on which the complaint relies and, with such knowledge, plaintiffs entered into the agreements of which they now complain and accepted the benefits thereof. Accordingly, plaintiffs have waived or released the claims made herein, or are guilty of laches with respect thereto, and are barred or estopped from maintaining this action.

FIFTH AFFIRMATIVE DEFENSE

69. Plaintiffs coerced and attempted to coerce NBC into entering agreements with themselves as composers and

lyricists containing terms proposed and demanded by plaintiffs and of which plaintiffs now complain.

SIXTH AFFIRMATIVE DEFENSE

70. Upon information and belief, most plaintiffs at all relevant times are or have been members of the Composers and Lyricists Guild of America (hereinafter the "Guild").

71. Upon information and belief, the Guild has repeatedly asserted before the National Labor Relations Board (hereinafter NLRB) that it represents "employees in the bargaining unit covering composers of music or lyrics for The Motion Picture and Television Industry".

72. Upon information and belief, the Guild has repeatedly claimed, before the NLRB and elsewhere, that it is a "union".

73. Upon information and belief, since some time prior to June, 1960, the exact date being unknown to defendant, the Guild has sought and engaged in collective bargaining with the members of the Association of Motion Picture and Television Producers, Inc., (hereinafter "Association").

74. The most recent collective bargaining agreement was executed in 1967 and provides in paragraph 4:

> "The producer recognizes the Guild as the exclusive representative for the purpose of collective bargaining of all composers employed under and subject to this agreement."

75. By letter dated March 12, 1969, NBC entered into an agreement with the Guild by which it obligated itself, inter

alia, to honor the minimum basic salaries of the collective bargaining agreement and to pay Pension, Health and Welfare benefits as provided in such collective bargaining agreement.

76. The collective bargaining agreement of 1967 and NBC's letter agreement based on said collective bargaining agreement were extended to November 30, 1971.

77. Upon information and belief, between June 1969 and January 17, 1972, the Guild and the Association engaged in numerous negotiating sessions relating to the renewal of the July 1, 1967 collective bargaining agreement; during the course of these negotiations, all the terms relating to the claims set forth in the complaint were discussed; at meetings held on December 27, 1971 and January 19, 1972 the Federal Mediation Service was present; the Guild and the Association failed to reach agreement; and to date a new collective bargaining agreement has not been consummated.

78. Upon information and belief, on or about November 30, 1971, the Guild filed charges with the NLRB against the Association alleging the commission of certain unfair practices, which charges, however, were thereafter withdrawn; on or about December 1, 1971, the Association filed charges with the NLRB against the Guild alleging the commission of certain unfair labor practices.

79. Upon information and belief, the claims set forth in the complaint have been the subject of extensive negotiations between the Guild and the Association. As the Labor Management Relations Act of 1947, as amended (29 U.S.C. § 141, et seq.)

provides a procedure for the prevention of certain unfair labor practices, including the failure of either party to bargain in good faith with regard to any term or condition of employment, exclusive and primary jurisdiction of the subject matter of this action is vested in the NLRB.

SEVENTH AFFIRMATIVE DEFENSE

80. The court lacks jurisdiction over the subject matter of this action by virtue of the provisions of the Norris-LaGuardia Act, 29 U.S.C. § 101, et seq., and the Clayton Act, 15 U.S.C. § 17; 29 U.S.C. § 52.

EIGHTH AFFIRMATIVE DEFENSE

81. Plaintiffs have not been injured in their business or property by reason of anything forbidden in the antitrust laws.

WHEREFORE, NBC demands judgment dismissing the complaint with costs and disbursements, and for such other and further relief as to the Court may seem just and proper.

CAHILL, GORDON, SONNETT, REINDEL & OHL

By David R. Hyde
(A Member of the Firm)

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ANSWER OF METRO-GOLDWYN-MAYER, INC.

(Reproduced herein at pages 108a through 116a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al.,

Plaintiffs,

-against-

UNIVERSAL PICTURES, INC., et al.,

Defendants.

ANSWER

72 Civ. 542

Defendant METRO-GOLDWYN-MAYER, INC., by its attorneys, SHEA GOULD CLIMENKO & KRAMER, for its answer to the complaint:

1. Denies each and every allegation in paragraph "1".

2. Denies each and every allegation in paragraph "2".

3. Denies each and every allegation in paragraph "3", except admits that said paragraph contains plaintiffs' definitions.

4. Answering paragraph "4", it admits that some of the plaintiffs have been employed as composers or lyricists by it; except as herein admitted, it avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "4".

5. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "5".

6. Answering paragraph "6", it denies the allegations in the last sentence in said paragraph; it admits that plaintiffs are or have been members of the Composers and Lyricists Guild of America, a trade union representing the interests of plaintiffs as employees in collective bargaining with certain of the defendants herein; except as admitted or denied, it avers that it is without knowledge or information sufficient to form a belief as to the

truth of the allegations in paragraph "6".

7. Denies each and every allegation in paragraph "7".

8. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "8".

9. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "9".

10. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "10".

11. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "11".

12. Denies the allegations in paragraph "12", except admits that: Metro-Goldwyn-Mayer, Inc. is a Delaware corporation, with its principal place of business at 10202 West Washington Boulevard, Culver City, California, and an office at 1350 Sixth Avenue, New York, New York; it is engaged in the business of producing motion pictures and television programs; some of its activities affect interstate commerce and it transacts business within the Southern District of New York.

13. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "13".

14. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "14".

15. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "15".

16. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "16".

17. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "17".

18. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "18".

19. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "19".

20. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "20".

21. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "21".

22. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "22".

23. Denies the allegations in paragraph "23", except, upon information and belief, admits that the Association of Motion Picture and Television Producers, Inc. is a membership corporation organized and existing under the laws of the State of California with its only place of business at 8480 Beverly Boulevard, Hollywood

California.

24. Denies the allegations in paragraph "24", except admits that it transacts business within the Southern District of New York.

25. Denies the allegations of paragraph "25", except it admits that it produces motion pictures and filmed and taped television shows and some of these motion pictures and television shows contain music and lyrics composed by certain plaintiffs.

26. Denies the allegations of paragraph "26", except it admits that original music is used in many motion pictures and television shows and musical compositions may consist of the creation of themes, songs and background scoring.

27. Denies the allegations of paragraph "27", except it admits that composers and lyricists who are members of a performing rights society customarily receive as compensation a share of the proceeds collected by such societies for the exhibition of motion pictures and television shows on television or in motion picture theatres outside the United States, where such societies have licensing rights therein.

28. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "28".

29. Denies each and every allegation in paragraph "29".

30. Denies the allegations in paragraph "30", except admits that it on occasion enters into individual employment agreements with composers and lyricists.

31. Denies each and every allegation in paragraph "31".

32. Denies each and every allegation in paragraph "32".

33. Denies each and every allegation in paragraph "33".

34. Denies each and every allegation in paragraph "34".

35. Denies each and every allegation in paragraph "35".

36. Denies each and every allegation in paragraph "36".

37. Denies each and every allegation in paragraph "37".

38. Denies each and every allegation in paragraph "38".

39. Denies each and every allegation in paragraph "39".

40. Denies each and every allegation in paragraph "40".

41. Denies each and every allegation in paragraph "41".

42. Avers that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "42", except admits that it produces motion pictures and filmed and taped television shows.

43. Denies each and every allegation in paragraph "43", except it admits that it owns a music publishing company.

44. Denies each and every allegation in paragraph "44".

45. Denies each and every allegation in paragraph "45".

46. Denies each and every allegation in paragraph "46".

47. Denies each and every allegation in paragraph "47".

48. Denies each and every allegation in paragraph "48".

49. Denies each and every allegation in paragraph "49".

50. Denies each and every allegation in paragraph "50".

51. Denies each and every allegation in paragraph "51".

52. Denies each and every allegation in paragraph "52".

53. Denies each and every allegation in paragraph "53".

54. Denies each and every allegation in paragraph "54".

55. Denies each and every allegation in paragraph "55".

56. Denies each and every allegation in paragraph "56".

57. Denies each and every allegation in paragraph "57".

58. Denies each and every allegation in paragraph "58".

59. Denies each and every allegation in paragraph "59".

60. Denies each and every allegation in paragraph "60".

61. Denies each and every allegation in paragraph "61".

62. Denies each and every allegation in paragraph "62".

63. Denies each and every allegation in paragraph "63".

FIRST AFFIRMATIVE DEFENSE

64. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

65. The Court lacks jurisdiction over the subject matter of this action.

THIRD AFFIRMATIVE DEFENSE

66. All causes of action which accrued prior to February 7, 1968 are barred by the Federal Four-Year Statute of Limitations, 15 U.S.C. §15-b.

FOURTH AFFIRMATIVE DEFENSE

67. Upon information and belief, plaintiffs at all relevant times are or have been members of the Composers and Lyricists Guild of America (hereinafter, "Guild").

68. The Guild has repeatedly asserted before the National Labor Relations Board (hereinafter, "NLRB") that it represents "employees in the bargaining unit covering composers of music or lyrics for The Motion Picture and Television Industry".

69. The Guild has repeatedly claimed, before the NLRB and elsewhere, that it is a "union".

70. Since some time prior to June, 1960, the exact date being unknown to this defendant, the Guild has sought and engaged in collective bargaining with the producing members of the Association of Motion Picture and Television Producers, Inc., (hereinafter, "Association").

71. Since June 1, 1960, the Guild and producing members of the Association, including this defendant, have entered into four collective bargaining agreements. The most recent collective bargaining agreement was executed on July 1, 1967 and provides in paragraph 4: .

> "The producer recognizes the Guild as the exclusive representative for the purpose of collective bargaining of all composers employed under and subject to this agreement".

72. The collective bargaining agreement of July 1, 1967 was extended by letter agreements to November 30, 1971.

73. Between June 1969 and January 17, 1972, the Guild and the Association engaged in numerous negotiating sessions relating to the renewal of the July 1, 1967 collective bargaining agreement. During the course of these negotiations, all the terms relating to the claims set forth in the complaint, inter alia, were discussed. At meetings held on December 27, 1971 and January 19, 1972 the Federal Mediation Service was present. The Guild and the Association failed to reach agreement and to date a new collective bargaining agreement has not been entered into.

74. On or about November 30, 1971, the Guild filed charges with the NLRB against the Association alleging the commission of certain unfair labor practices, which charges, however, were thereafter withdrawn. On or about December 1, 1971, the

Association filed charges with the NLRB against the Guild alleging the commission of certain unfair labor practices.

75. The claims set forth in the complaint have been the subject of extensive negotiations between the Guild and the Association. Since the Labor Management Relations Act of 1947, as amended (29 U.S.C. §141, et seq.) provides a procedure for the prevention of certain unfair labor practices, including the failure of either party to bargain in good faith with regard to any term or condition of employment, exclusive and primary jurisdiction of the subject matter of this action is vested in the NLRB.

FIFTH AFFIRMATIVE DEFENSE

76. The claims set forth in the complaint are barred by reason of the exemptions from the antitrust and other laws provided in Section 6 of the Clayton Act (15 U.S.C. §17), section 20 of the Clayton Act (29 U.S.C. §52), and section 1 of the Norris-LaGuardia Act (29 U.S.C. §101).

SIXTH AFFIRMATIVE DEFENSE

77. Plaintiffs have not been injured in their business or property by reason of anything forbidden in the antitrust laws.

SEVENTH AFFIRMATIVE DEFENSE

78. This defendant has employed certain plaintiffs for the express purpose of creating a musical composition for motion

picture and television shows. As an employer, this defendant has the right to the ownership of the work product so created, including but not limited to, the ownership of all copyrights therein, and all rights incident thereto, unless expressly agreed otherwise.

EIGHTH AFFIRMATIVE DEFENSE

79. Plaintiffs by reason of their prior conduct are individually and collectively estopped from asserting the claims alleged in the complaint.

WHEREFORE, defendant METRO-GOLDWYN-MAYER, INC. demands judgment dismissing the complaint, together with the costs and disbursements of this action, including counsel fees, and for such other and further relief as to the Court may seem just and proper.

SHEA GOULD CLIMENKO & KRAMER

By_____
(A Member of the Firm)

Attorneys for Defendant
METRO-GOLDWYN-MAYER, INC.
330 Madison Avenue
New York, New York 10017
212-661-3200

ANSWER OF WALT DISNEY PRODUCTIONS, INC.

(Reproduced herein at pages 118a through 123a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al., on behalf of themselves and all other persons similarly situated,	:	72 Civil 542
Plaintiffs,	:	ANSWER TO THE COMPLAINT BY DEFENDANT WALT DISNEY PRODUCTIONS, INC.
- against -	:	
UNIVERSAL PICTURES, INC., et al.,	:	
Defendants.	:	

The defendant, Walt Disney Productions, Inc. (hereinafter "Disney"), by its attorneys answers the complaint of the plaintiffs Elmer Bernstein, et al. (hereinafter the "Plaintiffs"), as follows:

1. Disney denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations of the complaint, except insofar as said allegations are hereinafter expressly admitted or denied.

2. Answering Paragraph 1, admits that Plaintiffs seek to invoke the jurisdiction of this Court under the statutes enumerated therein and denies that it has violated any of such statutes or that it is liable to Plaintiffs by reason of such statutes or for any other reason.

3. Answering Paragraph 2, denies the allegations thereof, except admits that Plaintiffs purport to maintain the action as a class action pursuant to Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure.

4. Answering Paragraph 3, denies the allegations thereof, except admits that Plaintiffs purport to set forth their definitions of certain words and phrases therein.

5. Answering Paragraphs 6 and 7, denies so much of the allegations thereof as pertain or are intended to refer to Disney.

6. Answering Paragraph 15, denies the allegations thereof, except admits that Disney is a corporation organized and existing under the laws of the State of California; that it has an office at 477 Madison Avenue, New York, New York; that it is engaged in the business of producing motion pictures and television shows; that such motion pictures and television shows are distributed in interstate commerce through a subsidiary company; and that it transacts business within the Southern District of New York.

7. Answering Paragraph 23, denies so much of the allegations thereof as pertain or are intended to refer to Disney except admits upon information and belief that the Association of Motion Picture and Television Producers, Inc. is a membership corporation organized and existing under the laws of the State of California and that its only place of business is at 8480 Beverly Boulevard, Hollywood, California.

8. Answering Paragraph 24, denies so much of the allegations thereof as pertain or are intended to refer to Disney, except admits that Disney transacts business within the Southern District of New York.

9. Answering Paragraph 25, denies so much of the allegations thereof as pertain or are intended to refer to Disney, except admits that Disney is a producer of motion pictures and taped or filmed television shows, that as such it is responsible for various aspects of said motion pictures and television shows,

including financing and budget control, retaining creative artists, technical personnel and facilities, and supervising production; that as part of its responsibilities, it has contracted with certain of the Plaintiffs to create music or lyrics for certain of said motion pictures and television shows; that through its subsidiaries or associated companies, said motion pictures and television shows are distributed across the boundaries of various states and the District of Columbia and across national boundaries to various communities in the United States and foreign countries; and that certain of such motion pictures and television shows have contained music and lyrics composed by certain of the Plaintiffs.

10. Answering Paragraph 26, denies so much of the allegations thereof as pertain or are intended to refer to Disney, except admits that music is a part of many motion pictures and television shows and that said music may consist of themes, songs or background scoring.

11. Answering Paragraph 27, denies so much of the allegations thereof as pertain or are intended to refer to Disney, except admits that with respect to various composers and lyricists with whom it has dealt, the compensation of such composers or lyricists has, at times, consisted of a salary plus a share of the proceeds collected by performing rights societies for the exhibition of the motion picture or television show on television or in motion picture theatres outside the United States or for live performances of the composition anywhere in the world, and a share of the proceeds if the music is published or exploited in any other way and alleges upon information and belief that some of said composers and lyricists were members of said performing rights societies.

12. Answering Paragraph 29, denies so much of the allegations thereof as pertain or are intended to refer to Disney, except admits that it seeks to secure the right to synchronize the music or lyrics into the film for performance in connection with the exhibition of a motion picture or television show; and that there are uses for the music or lyrics outside such synchronization into the film for performance in connection with the exhibition of a motion picture or television show.

13. Answering Paragraph 30, denies so much of the allegations thereof as pertain or are intended to refer to Disney, except admits that it has entered into employment contracts with individual composers and lyricists; and that some of these contracts have contained terms which were established or required by the provisions of a collective bargaining agreement in effect between Disney and the Composers and Lyricists Guild of America.

14. Answering Paragraphs 31 through 41 and 44 through 63, denies the allegations thereof.

15. Answering Paragraph 64, denies the allegations thereof and denies that plaintiffs and any persons they purport to represent are entitled to the relief asked for in the complaint, or to any of such relief, or to any other relief against Disney.

FIRST AFFIRMATIVE DEFENSE

16. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

17. The complaint, insofar as it purports to set forth a claim based upon, or to seek relief with respect to, matters occurring prior to February 7, 1968, is barred by the statute of limitations, 15 U.S.C. § 15b.

THIRD AFFIRMATIVE DEFENSE

18. The Court lacks jurisdiction over the subject matter of this action.

FOURTH AFFIRMATIVE DEFENSE

19. The matters complained of in the complaint are the subject of collective bargaining agreements to which Disney and other defendants, on the one hand, and various Plaintiffs acting by and through the Composers and Lyricists Guild of America, on the other hand, are parties, and are exempt from Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1,2) under Section 6 of the Clayton Act (15 U.S.C. § 17), Section 20 of the Clayton Act (29 U.S.C. § 52), the Norris-LaGuardia Act (29 U.S.C. § 101 et seq.) and the National Labor Relations Act (29 U.S.C. § 151 et seq.).

FIFTH AFFIRMATIVE DEFENSE

20. On or about November 30, 1971, Plaintiffs, by and through the Composers and Lyricists Guild of America, filed charges with the National Labor Relations Board (hereinafter "NLRB") against the defendant Association of Motion Picture and Television Producers, of which Disney and other defendants are members (NLRB Case No. 31-CA-2740). Such charges alleged generally that said Association, as "Employer", refused to bargain regarding the terms and conditions of employment for employees in the bargaining unit covering composers of music or lyrics for the motion picture and television industry and were subsequently withdrawn in or about March 1971. On or about December 1, 1971 said Association filed charges with the NLRB against said Guild alleging that said Guild had committed certain unfair labor practices.

Included in such charges are matters which are the subject of the complaint herein and they are presently pending before the NLRB. Under the doctrine of primary jurisdiction, the matters complained of in the complaint herein are outside the jurisdiction of this Court and are within the exclusive jurisdiction of the NLRB.

SIXTH AFFIRMATIVE DEFENSE

21. Under Federal Copyright Law (17 U.S.C. Secs. 26, 24), only Disney, as employer, is the author of and is entitled to the copyright in and to all musical compositions composed by composers and lyricists, including certain of the Plaintiffs herein, as employees of Disney.

WHEREFORE, Disney demands judgment dismissing the complaint as to it, together with its costs and disbursements in this action and for such other, further and different relief as to the Court may seem just and proper.

DONOVAN LEISURE NEWTON & IRVINE

By _____
A Member of the Firm
Attorneys for Defendant
Walt Disney Productions, Inc.
Two Wall Street
New York, N.Y. 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ELMER BERNSTEIN, et al.,

Plaintiffs,

- against -

UNIVERSAL PICTURES, INC., et al.

Defendants.

----------X

72 Civ. 542
(S.J.R.)

ORDER

On the 18th day of June, 1973, the Court signed an Endorsement and Order directing that this matter be maintained as a class action under the provisions of Rule 23 of the Federal Rules of Civil Procedure. By Notice of Motion dated the 12th day of July, 1973, plaintiffs moved the Court for an Order defining the members of the class and specifying the manner in which notice of pendency of this action shall be effected pursuant to the aforesaid Endorsement and Order. By Notice of Cross-Motion, dated the 6th day of September, 1973, the defendants, except Columbia Broadcasting System, Inc., moved for an Order defining the members of the class and specifying the manner in which notice of pendency of this action shall be effected. The aforesaid Motion and Cross-Motion came on for a hearing before the Court on the 20th day of September, 1973.

NOW, upon reading and filing the aforesaid Motion and the supporting affidavits of Theodore W. Kheel, sworn to on the 11th day of July, 1973, and Raymond F. Gregory, sworn to on the 14th day of September, 1973, the aforesaid Cross-Motion and supporting affidavit of Simon Rose, sworn to on the 29th day of August, 1973, and upon all the other papers and proceedings had

herein and upon hearing the arguments of Raymond F. Gregory, Esq. of Battle, Fowler, Lidstone, Jaffin, Pierce & Kheel, attorneys for plaintiffs, in support of the Motion and in opposition to the Cross-Motion, and Simon Rose, Esq., of Phillips, Nizer, Benjamin, Krim & Ballon, attorneys for certain of the moving defendants in support of the Cross-Motion and in opposition to the Motion, and due deliberation having been had thereon, it is

ORDERED that the class is defined as all composers and lyricists, and in the case of deceased composers and lyricists, their representatives, who have composed music and/or lyrics for any of the defendants for motion pictures and television shows, and it is

FURTHER ORDERED that counsel for plaintiffs and defendants shall compile a list of those composers and lyricists who are included in the above described class and to whom notice of pendency of this action shall be sent, and it is

FURTHER ORDERED that notice of pendency of this action in the form annexed to this Order shall be mailed to members of the class, and it is

FURTHER ORDERED that the notice of pendency of this action shall be published once weekly for two consecutive weeks in the weekly edition of "Variety" and it is

FURTHER ORDERED that this Order may be altered or amended by the Court as may be desirable from time to time.

Dated: New York, New York
October 5, 1973

Sylvester J. Ryan
U.S.D.J.

STIPULATION SEVERING ACTION AGAINST CBS - ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al., Plaintiffs, -against- UNIVERSAL PICTURES, INC., et al., Defendants.	(S.J.R.) 72 Civ. 542 STIPULATION

IT IS HEREBY STIPULATED that the claims of plaintiff class against defendant Columbia Broadcasting System, Inc. ("CBS"), in this action are severed from those against all other defendants and prosecution of them is stayed until May 1, 1974, unless such stay is sooner vacated by the Court, and that thereafter plaintiff class may prosecute those claims, and CBS may be required to move or answer, only after 30 days written notice to CBS.

September 14, 1973.

Attorneys for plaintiff class

Attorneys for defendant
Columbia Broadcasting
System, Inc.

SO ORDERED:

/s/ Sylvester J. Ryan
U.S.D.J.

PLAINTIFFS' STATEMENT PURSUANT TO GENERAL RULE 9(g)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al.,	:	
Plaintiffs,	:	72 Civ. 542 S.J.R.
- against -	:	
UNIVERSAL PICTURES, INC., et al.,	:	STATEMENT PURSUANT TO GENERAL RULE 9(g)
Defendants.	:	

Plaintiffs, for their statement pursuant to General Rule 9(g) of this Court and in support of their motion for summary judgment dismissing defendants' affirmative defenses based on (1) the labor exemption of the antitrust laws and (2) the claim of exclusive and primary jurisdiction in the National Labor Relations Board, state that the following material facts are those which plaintiffs contend there exists no genuine issue to be tried:

1. From the earliest use of music in motion pictures and continuing to the present, defendant motion picture producers (and with the advent of television, defendant television producers) have demanded all right, title, and interest, including the copyright, of musical composition written by composers and lyricists for motion pictures and television.

2. Other than rights in the music which the defendant producers require to produce the motion picture or television show, all rights in the music have been and are presently assigned, sold and transferred to music publishers owned and/or controlled by the defendants.

3. Composers and lyricists are denied any role in the selection of the music publishing company or in the negotiation of the terms of assignment, sale or transfer of the rights to their musical compositions.

4. These music publishers are engaged in businesses totally separate and distinct from the motion picture and television businesses.

5. With rare exception, defendant producers have refused to contract with a composer or lyricist who does not agree to certain standard contract terms including granting to the defendants all right and title to the music.

6. As a result of the standard terms imposed by defendants upon composers and lyricists, defendants are empowered to become the registered copyright author of the musical compositions.

7. By reason of these standard terms, the composer or lyricist must surrender to the defendants the opportunity to use the musical composition in ways unrelated to its use in the motion picture or television show.

PLAINTIFFS' STATEMENT PURSUANT TO GENERAL RULE 9(g)

8. In their relationship with the defendants, plaintiffs act as independent contractors, not as employees.

9. Defendant producers have refused to contract with a composer or lyricist unless he acknowledges in writing that he is an employee for hire of the defendant producer.

10. The last Minimum Basic Agreement between the Guild and the AMPTP expired in November, 1971 and since that time there have been no collective negotiations and none are contemplated.

BATTLE, FOWLER, LIDSTONE, JAFFIN,
PIERCE & KHEEL

By _____
a member of the firm

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TO:

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Attorneys for Defendants
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Paramount Pictures Corporation
MCA Inc. and Universal City Studios, Inc.
One Battery Park Plaza
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PLAINTIFFS' STATEMENT PURSUANT TO GENERAL RULE 9(g)

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Attorneys for Defendant
Twentieth Century-Fox Film Corporation
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SHEA, GOULD, CLIMENKO & KRAMER
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New York, New York 10017

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Walt Disney Productions, Inc.
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PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON
Attorneys for Defendants
Transamerica Corporation, Columbia
Pictures Industries, Inc., United
Arties Corporation, Warner Bros., Inc.
and Warner Communications, Inc. &
Association of Motion Picture &
Television Producers, Inc.
477 Madison Avenue
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CAHILL, GORDON, SONNETT, REINDEL & OHL
Attorneys for Defendant
National Broadcasting Company, Inc.
80 Pine Street
New York, New York 10005

PLAINTIFFS' NOTICE OF MOTION
FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al.,

Plaintiffs,

- against -

UNIVERSAL PICTURES, INC., et al.,

Defendants.

72 Civ. 542
S.J.R.

NOTICE OF MOTION

Please take notice that upon the annexed affidavits of Abraham Marcus, Ted Cain, David Raksin, Richard M. Sherman, Fred Steiner, John Parker, Jack Elliott, and Fred Karlin, the exhibits annexed thereto, and the pleadings herein, plaintiffs will move before Hon. Sylvester J. Ryan, at the United States Courthouse, Foley Square, New York, New York on September 11, 1973, at 10:00 A.M. pursuant to the Federal Rules of Civil Procedure 12(f), 56, and 65 for an order striking, or in the alternative, granting summary judgment dismissing defendants' affirmative defenses based on

(1) the labor exemption of the antitrust laws, and

(2) the claim of primary and exclusive National Labor Relations Board jurisdiction,

and for an order enjoining defendants during the pendancy

PLAINTIFFS' NOTICE OF MOTION
FOR SUMMARY JUDGMENT

of this action from imposing upon plaintiffs standard terms regarding the right to publish and exploit plaintiffs' musical compositions or from making any contracts having the effect of restraining plaintiffs from making use of their musical compositions or surrendering to defendants the copyrights in said musical compositions, and for such other and further relief as may be just and proper.

BATTLE, FOWLER, LIDSTONE, JAFFIN,
PIERCE & KHEEL

By _____
a member of the firm

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ZISSU, MARCUS, STEIN & COUTRE
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270 Madison Avenue
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TO:

SIMPSON, THACHER & BARTLETT
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Gulf & Western Industries, Inc.,
Paramount Pictures Corporation
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PLAINTIFFS' NOTICE OF MOTION
FOR SUMMARY JUDGMENT

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Attorneys for Defendant
National Broadcasting Company, Inc.
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AFFIDAVIT OF ABRAHAM MARCUS
IN SUPPORT OF PLAINTIFFS' MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al., Plaintiffs, - against - UNIVERSAL PICTURES, INC., et al., Defendants.	72 Civ. 542 (S.J.R.) AFFIDAVIT IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

ABRAHAM MARCUS, being duly sworn, deposes and says:

1. I am a member of the firm of Zissu, Marcus & Stein, co-counsel for the plaintiffs in this action. I am admitted to the bars of the States of California and New York.

2. Since 1954 I have been counsel for the Composers & Lyricists Guild of America, Inc. (the Guild). I have participated in each of the negotiations leading to Minimum Basic Agreements between the Guild and the Association of Motion Picture Producers, later called Association of Motion Picture and Television Producers (AMPTP). Minimum Basic Agreements were executed in 1960, 1965 and 1967. A copy of the 1967 agreement is attached as an exhibit to this affidavit.

3. Throughout all of the negotiations leading to these agreements, the AMPTP steadfastly held to the position that all rights in music and lyrics written for motion pictures and television inherently belong to the producer. In the negotiations leading to the 1960 Minimum Basic Agreement, I was able to convince the representatives of the producers that a performance rights clause would be beneficial, not only to the composers and lyricists, but also to the producers. As a result, such a clause was included in the final agreement. However, the producers during the course of these long negotiations held inalterably to their position with respect to the publication rights in the music.

4. In the negotiations leading to the 1965 Minimum Basic Agreement, the producers continued to rely upon this position. However, they agreed to include in the 1965 Agreement a provision permitting the composers to purchase back music not used by the producer after a period of time and a provision for the payment of royalties to composers and lyricists in the event that their compositions were published. The Agreement also provided that:

> "Nothing in this Agreement shall be construed to obligate the Producer or its licensees or assigns to publish, record, to reproduce or otherwise exploit any music or musical composition."

Thus, the producers in retaining these rights also retained the power to publish or not to publish the musical compositions.

AFFIDAVIT OF ABRAHAM MARCUS
IN SUPPORT OF PLAINTIFFS' MOTION

5. After several extensions, the 1967 Minimum Basic Agreement expired on November 30, 1971. No contract has been in existence since that time. There has been no negotiations between the Guild and the AMPTP and none have been or are now contemplated.

ABRAHAM MARCUS

Sworn to before me, this
17 day of July 1973.

Notary Public

OFFICIAL SEAL
A. EDWARD EZOR
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires June 27, 1976

EXHIBIT - 1967 MINIMUM BASIC AGREEMENT -
ANNEXED TO AFFIDAVIT OF ABRAHAM MARCUS

(Same as Exhibit 21 annexed to Affidavit of Simon Rose - Reproduced herein at pages 313a through 345a.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al.,	:	
Plaintiffs,	:	72 Civ. 542 (S.J.R.)
- against -	:	
UNIVERSAL PICTURES, INC., et al.,	:	AFFIDAVIT IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
Defendants.	:	

STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

TED CAIN, being duly sworn, deposes and says:

1. I have been involved in the motion picture industry since 1928, and have been employed by such motion picture producers as Paramount Pictures, Universal Pictures and Twentieth Century-Fox. Since 1967, I have been the executive director of the Composers & Lyricists Guild of America, Inc.

2. Music was first introduced in motion pictures shortly after the advent of sound. From the very beginning, all of the major motion picture companies required composers and lyricists to sign contracts which described them as employees-for-hire. These contracts also contain an assignment to the producer by the composer or lyricist of all right, title and interest in the musical composition. Such contracts have been continuously utilized in the motion picture industry and are presently in use. A typical example of this type of contract is attached hereto as Exhibit A.

AFFIDAVIT OF TED CAIN
IN SUPPORT OF PLAINTIFFS' MOTION

3. Until the early or mid 1950's, most of the major motion picture companies kept a staff of composers and lyricists on a permanent basis. These people devoted their sole efforts to a single motion picture company, were employed on an exclusive basis, and received regular periodic salary payments. All of the major producers maintained facilities on their premises for composers and lyricists to work.

4. Beginning in the early or mid 1950's these motion picture companies disbanded their staffs of composers and lyricists. Since then, nearly all composers and lyricists have worked on an independent or free lance basis. They contract their services for a single motion picture, or in the case of television, for an episode of a television series.

5. I have read the affidavits of David Raksin, Richard M. Sherman, John Parker, Fred Steiner, Jack Elliott and Fred Karlin. To my knowledge, their relationship with the producers described in these affidavits are typical of those in effect throughout the industry.

Ted Cain
TED CAIN

Sworn to before me, this
day of 1973.

Notary Public

OFFICIAL SEAL
HYMAN G. KORAL
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Sept. 27, 1976

EXHIBIT A - EMPLOYMENT AGREEMENT - ANNEXED
TO AFFIDAVIT OF TED CAIN

EMPLOYMENT AGREEMENT

November 24, 1971

Mr. Elmer Bernstein
28980 Newton Canyon Road
Malibu, California 90265

Dear Mr. Bernstein:

1. We hereby employ you to render your services for us as hereinafter provided in connection with our photoplay tentatively entitled "Warlock At Bock III" (GUEN MARSHALL) Production # 33925 (hereinafter referred to as "the photoplay" or "said photoplay") and you hereby accept such employment. You agree that you will render your services hereunder to such extent we require as a musical conductor and/or composer, including services in composing, adapting, arranging and orchestrating and assist in composing, orchestrating, adapting and arranging the music and/or musical score for said photoplay, and in the performance of such other services as may be required by us in connection with the preparation, rendition, recordation, reproduction and/or synchronization of music, musical compositions and/or scores, and will assist in the organization and conducting of orchestras and generally in connection with such musical work as we may request for or in connection with said photoplay. You agree that if you write and or contribute to the writing of any lyrics, we shall own and you hereby assign and transfer to us all rights of every kind therein and thereto. You agree that any and all musical material prepared and composed by you hereunder will be turned in to our Music Department in satisfactory form of what is commonly known in the trade as "full orchestral scores." You further agree that we shall have the right if we so desire to cause lyrics to be written to any and all music you write pursuant hereto, and that such lyrics shall be satisfactory in our sole discretion. You further agree that said lyricist shall share in all royalties as set forth in Paragraph 16 hereof. It is clearly understood and agreed that such lyrics may be written for use with said music either in the above-named photoplay or for any other use with said music as we in our sole discretion shall desire.

The term "photoplay" or any other term of like tenor as used herein includes but is not limited to, motion picture productions whether recorded on film or tape or other method of recordation, produced and/or exhibited with and/or publicly performed and/or accompanied by sound and/or voice recording, reproducing and/or transmitting devices, radio devices, television and all other improvements and devices which are now or hereafter may be used in connection with the production and/or exhibition and/or public performance and/or transmission of any present or future kind of motion picture productions, and we shall have the unlimited right to rerun the photoplay on television or release the photoplay theatrically or exhibit the photoplay by methods and inventions either now known or to become known in the future with no addtional compensation to you.

2. You agree that you will promptly and faithfully comply with all reasonable instructions, directions, requests, rules and regulations made or issued by us in connection with your services hereunder. You further agree to render your services hereunder conscientiously and to the full limit of your ability at all times, and to complete and deliver to us all material to be prepared by you hereunder by December 8, 1971. You further agree that if so requested by us, you will rewrite, revise and/or change all or any part of the material prepared by you hereunder to such extent as we may desire and you hereby grant us the right to rewrite, revise, and/or change all or any part of such material as we may desire, either for use in said photoplay or in any other photoplay or for any other use as we may in our sole discretion desire. You agree that our judgment shall be final and controlling in all matters respecting the rendition of your services hereunder including those involving artistic taste and judgment.

3. The term of your employment hereunder will commence on or about November 24, 1971 and will continue thereafter until the completion of all of your required services hereunder.

4. (a) On condition that you fully and completely keep and perform all of your obligations and agreements hereunder, we will pay you, as compensation therefor and for all rights herein granted and/or agreed to be granted by you to us, the sum of TWO THOUSAND DOLLARS * ($2,000.00), payable within ten days after completion of your services in connection with said photoplay.

(b) If the compensation provided for in this agreement shall exceed the amount permitted to be paid to you pursuant to any present or future law or governmental order or regulation, said compensation shall be reduced while such limitation is in effect to the amount legally permitted to be paid, and payment of such lesser amount shall be deemed to constitute full performance by us of our obligations hereunder with respect to the payment of compensation.

(c) We shall have the right to deduct and withhold from the compensation payable to you hereunder any amounts required to be deducted and withheld by us pursuant to any present or future law or governmental or judicial order or regulation requiring the withholding or deducting of compensation.

(d) Nothing contained herein shall be deemed to obligate us to use your services hereunder but we shall have fully discharged our obligations hereunder upon payment to you of the amount set forth in this Paragraph 4.

5. (a) In the event production of said photoplay is materially hampered, interrupted, delayed or prevented due to an Act of God, war, riot, civil commotion, fire, strike, labor conditions and/or troubles, act of any federal, state or local instrumentality, morals offense, death, disability or default of any member of cast or the director or producer, unavoidable accident, or for any other reason, similar or dissimilar, beyond our reasonable control, we shall have the right to terminate our obligations hereunder or to suspend your services and our obligations hereunder while such contingency continues, as we may elect.

(b) Your failure, refusal or neglect for any reason whatsoever, including, but not limited to, by reason of sickness, disability (mental or physical), unavoidable accident or default, to render your services hereunder as required by us for rehearsals, "spotting," photography, or otherwise in connection with said photoplay, shall give us the right to terminate your employment and all obligation to you hereunder forthwith.

(c) It is further understood that in the event we pay you any compensation during or in respect of any period when, pursuant to the provisions of this paragraph 5, we are not obliged to do so, the amount so paid shall at, our option, be returned to us upon demand or we may deduct the same from any compensation thereafter accruing to you hereunder (including royalties, which you hereby agree shall be paid to us by the publisher in such amounts as equal amounts due us hereunder) or under any subsequent employment agreement between you and us.

6. We and or our successors and assigns shall be and be deemed to be the author-at-law in all the results and proceeds of your services, and shall be entitled to and shall own in perpetuity, solely and exclusively, all of such results and proceeds (including, but without limiting the generality of the foregoing, the copyright therein and all rights throughout the world of production, synchronization, recordation, publication, public performance, broadcasting, television, dramatic rights, and reproduction by any art or method now or hereafter to be known, trademarks and patents whether such results and proceeds consist of literary, dramatic, musical, motion picture, mechanical, or other forms of works, themes, ideas, compositions, creations or productions, and irrespective of where and when the foregoing may be authored by you as long as such results and proceeds are conceived and created for or in connection with any services hereunder and you hereby assign and transfer to us all of the foregoing without any reservation, restriction, limitation or condition whatsoever. In the event that we should desire to secure separate assignments covering any results and proceeds of your services, you agree to execute and deliver the same to us upon our request therefor. Such assignments relating to music, lyrics or other musical material written, composed or created by you during your employment hereunder shall be in the form of Exhibit "A" attached hereto and by this reference incorporated herein, it being expressly agreed that each and all of the rights, privileges, representations, warranties and agreements granted, made and or set forth in said Exhibit "A" shall with respect to all music, lyrics and other musical material vest in and inure to our benefit immediately upon the creation thereof whether or not such assignments or any of them are executed. At our option, the execution by you of such assignments may be made a condition precedent to any payment of compensation to you provided for herein. We shall have the further exclusive right to use and display your name, voice and likeness for advertising, commercial and trade purposes during the term of your employment hereunder in connection with all your work hereunder, to advertise and publicize the photoplay, your music and or lyrics or any other photoplay in which your music and or lyrics are used, any sponsor thereof, any series of television programs in which the photoplay may be a part, and the products and services of any sponsor, provided that such use is not in the nature of a direct endorsement or testimonial. You shall not authorize or attempt to transfer any right, privilege, title or interest in or to any of the things above-specified, nor shall you at any time grant the right, authorize or willingly permit any person, firm or corporation other than us in any way to arrange upon such exclusive rights herein granted to us and you authorize us at our own cost, time or otherwise, to institute any legal proceedings to prevent such infringement. All rights herein granted to us shall vest in us, whether this agreement is terminated by the completion of all services herein agreed to be performed by you, or is sooner terminated by us or by any right of termination herein granted to us, or otherwise. Nothing herein contained shall be construed to obligate us to publish, use, license, sell or otherwise dispose of any music and or other works written or composed by you hereunder or of any rights that we may acquire therein, or to permit other persons, firms or corporations to do so, nor shall we be liable to you in any way for failing to do so or failing to permit others to do so. We shall have the exclusive, sole and complete right (but not the obligation) to publish, use, license, sell or otherwise dispose of, and to permit other persons, firms, and or corporations to publish, use, license, sell and or otherwise dispose of, any music and or other works written by you hereunder, upon such terms and for such prices and amounts and subject to such conditions and agreements as we in our sole judgment and discretion may deem desirable. We shall also have the right to adjust and settle all disputes with publishers, licensees and all other persons, including the right to make allowances and to give credit and to adjust claims therefor. Your

rights under Paragraph 16 to receive the royalties therein provided for shall not derogate from, limit, prejudice, impair or affect any rights granted to us hereunder.

7. You acknowledge that the services to be rendered by you hereunder and the rights and privileges herein granted to us by you are of a special, unique, unusual, extraordinary and intellectual character which gives them a peculiar value, the loss of which cannot reasonably or adequately be compensated in damages in an action at law, and that a breach by you of any of the provisions contained herein will cause us irreparable injury and damage. You expressly agree that we shall be entitled to injunctive and other equitable relief to prevent a breach of this agreement by you. Resort to such equitable relief, however, shall not be construed as a waiver of any rights or remedies which we may have for damages or otherwise.

8. No waiver by either of us of any breach of any covenant or provision of this agreement by the other shall be deemed to be a waiver of any preceding or subsequent breach of the same or any other covenant or provision. Each and all of the several rights, remedies and options granted under the terms of this agreement shall be construed as cumulative and no one of them as exclusive of the others or of any right or remedy allowed by law.

9. All notices which we and/or any publisher to whom we assign or otherwise transfer your music and/or lyrics are required or may desire to serve upon you under or in connection with this agreement may be served by addressing the same to you at:

c/o Bart/Levy Associates, 280 So. Beverly Dr., Beverly Hills, Calif. 90212 - Suite 510

or at such other address as may be designated from time to time in writing by you, or if no such address be designated in writing by you, or if having designated an address you cancel the same and fail to designate a new address in writing, then by addressing the same to you at any place where we have a studio or an office, and in any case by depositing the same so addressed, postage prepaid, in the United States mail or by sending the same so addressed by telegraph or cable or, at our option, we or the aforementioned publisher may deliver the same to you personally either in writing or, unless otherwise specified herein, orally. If we or the aforementioned publisher elect to mail such notice or to send the same by telegraph or cable, such notice shall be deemed to have been served upon you on the date of mailing thereof or the date of delivery thereof to the telegraph or cable office, as the case may be.

10. Nothing in this agreement shall be construed to require the commission of any act contrary to law and if there is any conflict between any provisions of this agreement and any present or future law or governmental order or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the provisions of this agreement shall be limited only to the extent necessary to bring them within the legal requirements.

11. During the term of this agreement, at such time or times and during such period or periods as it may be lawful for us to require you to do so, you shall, at your sole cost and expense, remain or become and remain a member in good standing of the then properly designated labor organization or organizations (as then defined under the then applicable law) representing persons performing services of the type and character that are required to be performed by you hereunder. To the extent that your employment hereunder is covered thereby, this agreement is subject to the conditions of the "Producer-Composers and Lyricists Guild of America Minimum Basic Agreement of 1965," and the provisions of said Minimum Basic Agreement are herein incorporated to the extent applicable.

12. Nothing in this agreement shall be construed so as to interfere with, violate or be contrary to the provisions of any collective bargaining agreement to which we are signatory and which applies to any work which you perform hereunder. We shall be entitled to all rights allowed by such collective bargaining agreement except as specifically limited by the terms of this agreement.

13. You agree that you will conduct yourself with due regard to social conventions and public morals and decency and that you will not commit any act or become involved in any situation or occurrence or make any statement tending to degrade yourself in society or to bring you into public disrepute, contempt, scandal, or ridicule or, in our opinion, tending to reflect unfavorably upon us, or any of our affiliated companies, any current or proposed sponsor of said photoplay or of the series of television photoplays in which said photoplay is intended to be exhibited, or such sponsor's advertising agency, or any network or station over which said photoplay is intended to be broadcast. Your refusal, even though in accordance with your legal rights, to testify before any court, congressional or other legislative committee, administrative board or any other duly constituted governmental authority, federal, state or local, or your citation for contempt by any such authority, shall be deemed a breach of this paragraph. In the event that you fail to comply with the provisions of this paragraph or in the event that any publicity occurs after the date hereof with respect to any of the foregoing which has happened in the past, we may forthwith terminate your employment hereunder, or, we may refuse to give you the billing herein provided for, if any, without prejudice to any other rights or remedies which we may have. Any breach by you of the provisions of this paragraph is herein sometimes called a "morals offense."

14. On condition that you fully and completely keep and perform each and all of your obligations and agreements hereunder, and that said photoplay as finally released shall contain a musical score composed solely by you, we agree to give you credit on the positive prints of said photoplay, which credit shall be substantially in the following form:

MUSIC ELMER BERNSTEIN

In the event that said musical score shall have been written by you in collaboration with others, or written only in part by you, or written solely or partially by you but based on musical themes written by others, then the wording of such credit shall be left to our sole discretion and judgment. Nothing herein contained shall be construed so as to prevent so-called "trailers" or other advertising on the screen without mentioning your name, and no casual or inadvertent failure to comply with the provisions of this paragraph shall constitute a breach of this agreement. You expressly agree that no act or omission of third parties, such as, for example, sponsors, networks, broadcasting stations, or any others, shall be, or be deemed to be a breach of this Paragraph 14. It is further understood that we shall be free to use all or part of the results and proceeds of your services hereunder in other photoplays as we in our sole discretion see fit and that in such case no credit as above set forth shall be due or owing to you.

15. You have informed us that you are a member of the American Society of Composers, Authors and Publishers (hereinafter referred to as ASCAP) and that by reason of your membership therein may have conveyed to ASCAP certain rights or authority to license public performance of the musical material written by you hereunder. However, you grant to us and we shall have the specific and irrevocable right under any and all circumstances, in perpetuity to perform publicly for profit, or otherwise, and to authorize others so to do (by any and all present or future methods and means of public performance, whether or not now known or contemplated) the musical material written by you hereunder, or any part or parts thereof throughout the world.

16. Without in any way derogating from or limiting the sole, exclusive and complete ownership by us of all rights of every kind and character whatsoever in and to all work of every kind done by you hereunder, we agree, conditioned upon the full and complete compliance by you with all your obligations hereunder, that upon publication by a publisher of our choice, of any of the material written by you pursuant to this agreement, it being specifically understood that we have the sole right in our judgment and discretion to have such material altered, edited, arranged or orchestrated in whole or in part in forms suitable for publication as a separate musical composition or suite or symphonic selection or any other form as we in our sole judgment and discretion shall decide, which publication is within our sole discretion, we will pay you, or cause such publisher to pay you in accordance with the usual practice, royalties as follows:

(a) In respect of regular piano copies sold and paid for in the United States, a royalty of four cents ($ .04) per copy.

(b) Fifty percent (50%) of all net sums received by such publisher in respect of regular piano copies, orchestrations, band arrangements, octavos, quartets, arrangements for combinations of words and or instrumets, and or other copies of the composition sold in *countries other than the United States*.

(c) Ten percent (10%) of the wholesale selling price (after trade discounts, if any) of each copy sold and paid for in the United States and Canada or for export from the United States of orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and or instruments, and or other copies of the composition (other than regular piano copies).

(d) Fifty percent (50%) of all gross receipts of such publisher in respect of any licenses authorizing the *manufacture of parts of instruments* serving to mechanically reproduce the music and or lyrics or to use the music and or lyrics in synchronization with visual motion pictures or to reproduce it upon electrical *transcriptions* for broadcasting purposes and in respect of foles, the sum of $12.50 [illegible] in which any of the results and proceeds of your services hereunder are used, and of any and all gross receipts of such publication from any other source now known or which may hereafter come in existence, except that you shall not be entitled to any share of the gross receipts distributed to such publisher by the performing rights organization specified in paragraph 15 hereof, or any other performing rights organization throughout the world which makes a distribution to composers either directly or through the performing rights organization specified in paragraph 15 hereof.

The foregoing rates shall apply only in cases in which all of the words and music of the musical composition have been composed and written solely by you, or in cases of a musical composition written by you hereunder for which no lyrics have been written at the time of the particular use of the music. If others are instrumental with you in composing such words and or music, the royalties shall be determined proportionately, it being agreed that one-half (1/2) shall be allowed for the music and one-half (1/2) for the words (there being no allowance for the title). For example: If you compose all of the music and others write the words, then the royalties payable to you hereunder shall be one-half (1/2) of the amounts hereinabove set forth. If you write all of the music and collaborate with two (2) persons in writing the words, the royalties payable to you hereunder would be one-half (1/2) plus one-sixth of the amounts hereinabove set forth. The royalties hereinabove mentioned are payable to you only in connection with compositions originally created by you and are not payable in connection with translations, arrangements, adaptations, paraphrases or orchestrations of other original com-

positions. Any failure on the part of such publisher to pay directly to you the royalties specified herein shall not constitute a breach on the part of any provision of this agreement.

17. You shall not be entitled to receive any royalties or payments for the use of the music and/or lyrics composed by you hereunder in any form of sound reproduction and/or synchronization with or with motion pictures produced and/or distributed by us or by any of our subsidiaries or affiliated companies except such royalties as may be distributed to you by ASCAP or any other performing rights society.

18. We agree to assign all rights in the music and/or lyrics composed by you to Leeds Music Corporation

a company which is a publisher member of ASCAP.

19. You represent and warrant that you are not under and will not enter into any contractual obligations of any kind to any person, firm or corporation whatsoever which will or might in any way interfere with the execution of this agreement by you or with the full and complete performance by you of each and all of your obligations and agreements hereunder, or which will or might preclude, prevent or interfere with the full and complete exercise and enjoyment by us of each and all of the rights granted to us hereunder. You expressly agree to indemnify and hold us harmless of, from and against any and all loss, cost, damage, liability and/or claim, including attorneys' fees which may be suffered, sustained by or imposed upon us by reason of the breach by you of any of the representations, warranties and/or agreements made and/or to be performed by you hereunder.

20. We, our lessees, licensees and all other persons permitted by us to distribute, exhibit and/or exploit any photoplay in connection with which any musical material written, prepared or composed, in whole or in part, by you hereunder is used, shall have the free and unrestricted right to use any such musical material and to make mechanical reproductions thereof without the payment of any charge or royalties whatsoever, and in no event and under no circumstances shall you be permitted or entitled to participate in any rentals or other sums of money or royalties received by us, our lessees, licensees, or any other persons permitted by us to use any such musical material and/or mechanical reproductions thereof, in connection with the exhibition, distribution, exploitation and/or advertising of any present or future kind of photoplays, nor shall we be obligated to account to you for any rentals or other sums of money or royalties received by us from any other persons from the sale, use, licensing or other disposition of any musical material written, prepared or composed, in whole or in part, by you hereunder in connection with the exhibition, distribution, exploitation and/or advertising of any present or future kind of photoplays.

21. We may transfer or assign all or any part of our rights hereunder to any person, firm or corporation, and this agreement shall inure to the benefit of ourselves, our successors and assigns.

If the foregoing is in accordance with your understanding and agreement, kindly indicate your approval and acceptance thereof in the space hereinbelow provided

Very truly yours,

UNIVERSAL TELEVISION, a division of
Universal City Studios, Inc.

By

APPROVED AND ACCEPTED:

ELMER BERNSTEIN

EXHIBIT A

MUSIC

ASSIGNMENT OF RIGHTS

KNOW ALL MEN BY THESE PRESENTS:

1. That ..... hereinafter referred to as the "Employee," for and in consideration of the sum of ONE DOLLAR ($1.00) and other good and valuable consideration paid to the Employee by ..... hereinafter referred to as the "Producer," the receipt of which is hereby acknowledged, has given, granted, bargained, sold, assigned, transferred, and set over, and does by these presents give, grant, bargain, sell, assign, transfer and set over, forever, unto the Producer, solely and exclusively, all rights of every kind and character whatsoever throughout the world in and to the music and lyrics written by the Employee under his employment agreement with the Producer, dated ....., 19..... Said music, lyrics, and other work and/or the results thereof written, prepared, or suggested by the Employee are hereinafter sometimes referred to as the "work", and said musical composition, including musical score, lyrics, title, arrangement and each and all of the other component parts of said musical composition, is sometimes hereinafter referred to as the "composition." The Employee does further sell, assign, transfer and set over unto the Producer the complete and unencumbered title in and to said work, for all purposes whatsoever, without condition, restriction, or limitation of any kind, and does hereby sell, assign, transfer and set over unto the Producer all of the Employee's right, title and interest in and to said composition.

2. The Employee does further give, grant, bargain, sell, assign, transfer and set over, forever, to the Producer the absolute and unqualified right to use said work and/or said composition in whole or in part, in whatever manner said Producer may desire, including (but not limited to) the right to adapt, arrange, change, transpose, add to and subtract from said work and/or composition, or any part thereof, to such extent as the Producer in its sole discretion may desire. The Producer shall have the right, but not the obligation, to use the name of the Employee in connection with said work and/or composition, or any part or parts thereof, and shall have the further right, but not the obligation, to use the title thereof in connection with said work and/or composition; and/or the Producer may use in connection with said work and/or composition any other title or titles which the Producer may select, and/or the Producer shall have the right to use the title of said work and/or composition in connection with any musical, literary, dramatic or other works not based upon said work and/or composition.

3. The Employee does further hereby give, grant, bargain, sell, assign, transfer and set over, forever, to the Producer the right to obtain copyright in all countries upon said work and/or composition, and to exercise any and all rights and remedies under any such copyright.

4. The Employee hereby represents and warrants that he is the sole composer, author and owner of said work; that the Employee is the sole owner of all rights of any and all kinds whatsoever throughout the world therein and thereto; that there has been no publication thereof or of any part thereof with the knowledge or consent of the Employee anywhere in the world; that the Employee has the sole and exclusive right to dispose of each and every right herein granted and/or purported to be granted; that said work is not, nor is any part thereof, in the public domain but is validly copyrightable throughout the world as an original work; that the Employee has not in any way conveyed, or hypothecated any rights of any kind or character in or to said work and or composition, or any part thereof, to any person whomsoever other than the Producer, nor has the Employee granted any right, license or privilege with respect to any of the rights or property herein granted and/or purported to be granted to any person other than the Producer; that there is at the date of these presents no litigation pending or threatened affecting the use of said work or composition and/or of the title thereof; that the title thereof is available for use in connection therewith or otherwise; that the Employee has not done or caused or permitted to be done any act or thing by which any of the rights or property herein granted and/or purported to be granted to the Producer have been in any way impaired; and that the Employee will not any time execute any further agreement or agreements in conflict herewith, nor will the Employee do or cause or permit to be done any act or thing by which the rights or property herein granted and/or purported to be granted to the Producer may in any way be impaired. The Employee further represents and warrants that said work is original with the Employee in all respects; that the same is not, nor is any part thereof, taken from or based upon any other musical, dramatic or other work, or in any way infringes upon the copyright or any other right of any individual, person, firm or corporation; and that the use of said work by the Producer in any form whatsoever will not in any way, directly or indirectly, infringe upon the rights of any individual, person, firm or corporation whatsoever.

5. The Employee hereby appoints the Producer the true and lawful attorney of the Employee, irrevocably, but for the sole benefit of the Producer, to renew and/or extend any and all copyrights in the work, to institute and prosecute such proceedings as the Producer may deem expedient to protect the rights herein granted and/or purported to be granted, and/or to affect the recovery by the Producer of damages and penalties for the infringement of said rights, and/or to secure to the Producer the full benefit of all of the rights herein granted and or purported to be granted, and to collect and receipt for all damages arising from any infringement of said rights, and any recovery costs, and damages collected or received are hereby assigned to and shall belong to the Producer. The Producer may sue in its own name and/or may use the name of the Employee and/or at its option may join the Employee as party plaintiff or defendant in any suit or proceeding brought for such purpose or purposes.

6. The Employee hereby guarantees and warrants that the Employee will indemnify, make good, and hold harmless the Producer of, from and against any and all loss, damage, costs, charges, legal fees, recoveries, judgments, penalties and expense which may be obtained against, imposed upon, or suffered by the Producer by reason of any infringement or violation or alleged infringement or violation of any copyright or any other right of any individual, person, firm or corporation, or by reason of or from any use which may be made of said work and/or composition by the Producer, or by reason of the breach of any term, covenant, representation or warranty herein contained, or by reason of anything whatsoever which might prejudice the securing to the Producer of the full benefit of the rights herein granted and/or purported to be granted. The foregoing guarantee and warranties shall not apply to any change in said work and/or composition which may be made by the Producer.

7. The Employee hereby agrees duly to execute, acknowledge and deliver, and or to procure the due execution, acknowledgment and delivery, to the Producer of any and all further assignments and or other instruments which in the sole judgment and discretion of the Producer may be deemed necessary, or expedient to carry out or effectuate the purposes or intent of this present instrument.

8. If the names of two or more persons appear hereinabove in Paragraph 1 as the "Employee," or if this instrument be executed by two or more persons, then and in that event this agreement shall be binding jointly and severally upon said persons, and each of them, and each and all of the representations, warranties, agreements and obligations on the part of the Employee hereinabove set forth shall be and be deemed to be the joint and several representations, warranties, agreements and obligations of said persons, and each of them, and the terms "Employee" and "he" wherever "he" refers to the Employee, shall be deemed to include and apply to all persons who are described as the Employee, and wherever the context so requires, the masculine gender shall include the feminine and neuter, the singular shall apply to and include the plural, as well the plural. The term "Producer," as used herein, shall include the Producer hereinabove named, as well, its successors and assigns. The Producer may assign, transfer and grant all or any part of the rights herein granted to any individual, firm, person or corporation, without limit, and shall enjoy its rights hereunder in perpetuity and forever, as long as any rights in said composition are recognized in law or in equity, except insofar as such period of perpetuity may be shortened due to any copyrighting by the Producer of said work and/or composition, in which case the Producer shall enjoy its rights hereunder for the full duration of such copyright or copyrights, including any and all renewals and extensions thereof.

IN WITNESS WHEREOF the Employee has set his hand this ..... day of ..... 19.....

.....
(Employee)

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss

On this ..... day of ....., 19 ....., before me, ...
a notary public in and for said county and state, residing therein, duly commissioned and sworn, personally appeared .....
.....known to me to be the person whose name.... is/are subscribed to the foregoing instrument, and acknowledged to me that ....he....executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

.....
Notary Public in and for the County of Los Angeles,
State of California

EMPLOYEE FOR HIRE CERTIFICATE

I hereby certify that I wrote the music~~xxx lyrics~~ for the musical composition entitled

"Warlock At Rock III" (GEN MARSHALL) #33925

as an employee of UNIVERSAL TELEVISION, a division of Universal City Studios, Inc. (herein called "Employer") pursuant to an agreement dated November 24, 1971 in performance of my duties thereunder and in the regular course of my employment and that said Employer is the author thereof and entitled to the copyright therein and thereto, and any and all renewals and extensions thereof, with the right to make such changes therein and such uses thereof as it may determine as such author.

ELMER BERNSTEIN

AFFIDAVIT OF DAVID RAKSON
IN SUPPORT OF PLAINTIFFS' MOTION

(Reproduced herein at pages 142a through 149a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ELMER BERNSTEIN, et al., :

Plaintiffs : 72 Civ. 542

- against - : AFFIDAVIT IN SUPPORT OF PLAINTIFFS' MOTION

UNIVERSAL PICTURES, INC., et al., : FOR SUMMARY JUDGMENT

Defendants. :

----------X

STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

DAVID RAKSIN, being duly sworn, deposes and says:

1. I am one of the named plaintiffs in the above entitled action. I make this affidavit in support of plaintiffs' motion for summary judgment dismissing the affirmative defenses pleaded by the defendants based on the so-called "Labor Exemption" of the United States Anti-Trust Laws.

2. I am a composer of musical compositions used in connection with motion picture photoplays produced for theatrical exhibition, including the theme for the picture "Laura". For many years, in the 1930's, 40's and early 50's, I worked as a staff composer for major studios, such as, Twentieth Century-Fox and MGM. I believe that my experiences as a staff employee of these studios are significant in that they demonstrate the clear distinction between my status as such employee and the status I have enjoyed since those employment relationships were terminated.

3. At Fox, when a picture was to be scored, a meeting of all of the staff composers, orchestrators, music cutters, together with the music director and his assistant would be called. Typically, at the conclusion of the meeting, we were given three days in which to complete the music. Under these conditions, our first view of the picture was at the spotting session. The projectionist would stop the film whenever anyone at the meeting thought music might be appropriate. The three or four staff composers and the studio music director would then sit down together and decide upon the various themes which would be used. Each of us would then go off to our own offices on the studio premises and write the themes. Later, we would meet again, play the themes we had written, and select the best. The music copyists would then copy the themes and by the afternoon of the first day, harmonized copies would be distributed to the composers involved, along with typed "breakdowns" of sequences for which music was to be composed. In these breakdowns, all of the visual action, camera moves, cuts, optical effects such as dissolves and fades, dialogue, and sound effects were described and placed (in order of appearance) in increments of time (seconds or thirds of seconds). The distribution of the breakdowns together with the reels was made more or less on the basis that some composers were better than others in composing certain types of music. Thus, the composing of film music in those times was a joint effort of a number of composers, all on the staff of the studio. Generally, we worked at the studio and were paid on a weekly basis; I did not have a contract with the studio.

4. I last worked as a staff composer in 1950 or 1951 at MGM. After leaving the MGM staff, I became an independent contractor creating music scores for various producers. Some of the films for which I have written music are as follows:

Motion Picture	Producer
Laura	Otto Preminger, for 20th Century-Fox Film Corp.
The Secret Life of Walter Mitty	Samuel Goldwyn
Carrie	William Wyler, for Paramount Pictures
The Bad and The Beautiful	John Houseman, for Metro-Goldwyn-Mayer (MGM)
Separate Tables	Harold Hecht, for United Artists
Forever Amber	Otto Preminger, for 20th Century-Fox Film Corp.
Al Capone	Richard Wilson, for Allied Artists
A Big Hand for the Little Lady	Fielder Cook, for Warner Brothers

5. When I initially began working as an independent, some of the studios provided office space. This was desirable because it was helpful to work in proximity with the music cutter and other members of the studio musical staff. However, for a number of years, the studios generally have not furnished any space or facilities for independent composers. Thus, I have done all my composing at home where I have a studio with a piano, a research library, electronic recording tape and other equipment representing an investment of $10,000.00.

6. Since 1951, all film composing which I have done has been unsupervised in terms or hours of work and working conditions or in any other respects.

OFFICIAL SEAL
BARBARA J. BURNS
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Mar. 7, 1977

David Raksin
DAVID RAKSIN

Sworn to before me, this

12 day of June, 1973.

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ELMER BERNSTEIN, et al., : 72 Civ. 542

Plaintiffs, :

- against - : AFFIDAVIT IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

UNIVERSAL PICTURES, INC., et al., :

Defendants. :

----------X

STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

RICHARD M. SHERMAN, being duly sworn, deposes and says:

1. I am one of the named plaintiffs in the above entitled action. I make this affidavit in support of plaintiffs' motion for summary judgment dismissing the affirmative defenses pleaded by the defendants based on the so-called "Labor Exemption" of the United States Anti-Trust Laws.

2. I am a songwriter, composing the music and lyrics of songs which are used primarily in connection with motion pictures produced for theatrical exhibition. I have, on occasion, written songs that have been used in television variety productions, such as, "The Goldilocks Bing Crosby Special" and episodes of "Walt Disney's Wonderful World of Color". My work is done in conjunction with my brother, Robert B. Sherman.

3. Up to five years ago and for a period of eight years prior to that, my brother and I were employees of the Walt Disney Studios. I believe that our experiences as employees of that studio are relevant to the plaintiffs' instant application in that they point up the contrast between our former status as employees and our present status as independent contractors.

4. At the Walt Disney Studios, we were provided with offices to work in and all the equipment that was required for composing. Everything was supplied, even paper and pencils. We normally worked a five day week and spent regular hours at the studio. We were employed under year to year contracts and were paid weekly salaries by Disney, the normal withholding deductions being made from our salaries. Our work was assigned to us by the studio officials and, in general, we worked under the direction of the studio staff. Sometimes we were even supervised by Walt Disney himself.

5. About five years ago, my brother and I left the employ of the Disney Studio and became independent film songwriters. Both my brother and I have formed corporations, and agreements for our services as songwriters are now made between the producers and our corporations with the corporations receiving the fees, without any deductions being made for withholding taxes or other personal deductions.

6. Some of the films for which we have written songs since leaving the employ of the Disney Studio are as follows·

Motion Picture	Producer
Snoopy Come Home (1972)	Cinema Center Films for National General
Charlotte's Web (1973)	Hanna-Barbara/Sagittarius for Paramount
Tom Sawyer (1973)	APJAC International for United Artists

7. Our experience in writing the songs for the film "Snoopy Come Home" is typical of our manner of working since we have become independent. We initially received a call from the office of the producer, Cinema Center who advised that the producer wanted us to do a song score for the picture. We then met with the producer, the director, and Charles Schultz, the creator of the Peanuts comic strip, and looked at the story board which had been made up. We liked the concept and our manager than negotiated an agreement for our corporations to do the picture.

8. We commenced our work by attending conferences with the writer and director of the film. Thereafter, we began creation of the song score which, eventually, consisted of approximately 8 songs. We did this work at our own offices and were not offered any space by the studio. Our offices consist of a four room suite, one room of which is soundproof. The facilities which our corporations own include a piano and various recording devices, representing an investment of approximately $10,000.00.

AFFIDAVIT OF RICHARD M. SHERMAN
IN SUPPORT OF PLAINTIFFS' MOTION

9. After the songs were completed, they were played for the film makers and after minor revisions based on their suggestions, the score was incorporated into the movie.

10. Generally, the nature of our work requires us to work exclusively on one project at a time; however, if time permitted, we would feel free to work on several projects at the same time. As independent contractors, we have made various arrangements for the payment of our fees depending on the nature of the production and the producer. For example, on the "Tom Sawyer" project, where we not only wrote the songs but also the book, we agreed to a deferral until recoupment of certain costs, of a substantial portion of the fee payable to our corporation.

Richard M. Sherman
RICHARD M. SHERMAN

Sworn to before me, this
11TH day of June, 1973.

Lynn Chertkow
Notary Public

OFFICIAL SEAL
LYNN CHERTKOW
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Aug. 22, 1975

9350 Wilshire Blvd., Beverly Hills, CA. 90212

AFFIDAVIT OF FRED STEINER
IN SUPPORT OF PLAINTIFFS' MOTION

(Reproduced herein at pages 151a through 156a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ELMER BERNSTEIN, et al.,

Plaintiffs,

- against -

UNIVERSAL PICTURES, INC., et al.,

Defendants.

----------X

77 Civ. 542

AFFIDAVIT IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

FRED STEINER, being duly sworn, deposes and says:

1. I am one of the named plaintiffs in the above entitled action. I make this affidavit in support of plaintiffs' motion for summary judgment dismissing the affirmative defenses pleaded by the defendants based on the so-called "Labor Exemption" of the United States Anti-Trust Laws.

2. I am a composer of musical compositions which are presently used primarily in connection with television productions. I originally began composing music for radio broadcasting and with the advent of television, I began composing scores for live television shows. Now approximately 90% of my work is composing musical scores for television film productions. The music which I compose is generally for individual episodes of a television series such as the well known "Mannix". Some other television series for which I have composed music are as follows:

Name of Show	Producer
O'Hara: Treasury Agent	Universal
Star Trek	Paramount
Virginian	Universal
Bonanza	Xanadu-NBC
Daniel Boone	20th Century-Fox
Perry Mason	CBS
Lancer	CBS
I Spy	Thomas-Spelling
Hogan s Heroes	Bing Crosby Productions
Rawhide	CBS
Twilight Zone	CBS
Have Gun Will Travel	CBS
Rocky and Bullwinkle	Jay Ward

3. The manner in which I compose music for episodes of "Mannix" is fairly typical of my general method of operations for all of the shows for which I have composed music over the past 20 years. Initially the producer of the show or the music director of the producing studio calls my agent or myself to inquire as to my availability to write the music for a particular episode. The producer or music director will make a proposal with respect to my fee and thereafter my agent or I will indicate whether the proposal is acceptable. Each episode of a particular series is covered by a separate contract between the producer or the producing studio and myself. The agreed upon fee usually covers composing, orchestrating and conducting the music for the episode. After an agreement has been made, I call the producing studio's music director to confirm the arrangement. At or about this time, a date will be specified on which the film of the episode will be specifically screened for me for the purpose of deciding where music will be used in the film. This is called the spotting session and the producer or studio's music director usually attends. In making the decision as to where the music should be inserted in the film, I make the intial proposals and the matter is then discussed among the

producer or music director, the music editor and myself. In addition, we determine the number of minutes of music which will be included in the episode. Generally, in a 60 minute episode, there will be 20 to 25 minutes of music.

5. After the spotting session, the music director will inquire as to the number of musicians I will require for the orchestra which will record my music, and the approximate number of hours I will require for the recording. Later, after I have written some of the music, I give the music director a list of certain key musicians who I want to be part of the orchestra. I find that I work better and faster with people with whom I am familiar (thereby saving recording time and expense for the producer) and, in some instances I actually compose portions of the music with particular musicians in mind. A date is set for recording which is, in effect, the date on which I must complete my work. For a 60 minute episode, this date is usually ten days to two weeks after the spotting session.

6. When the spotting session is completed, I await the time sheets for the show which are delivered to my home by courier. My composing is done entirely at home and generally I have no further contact with the producer or studio's music director until the music is ready to be recorded or dubbed onto the soundtrack. When I do a show like "Mannix", the producer does not hear the music prior to the dubbing session.

7. At home I work with my own equipment - a piano, tape recorders, turntables, etc. - which I have purchased. The area in which I work in my home is furnished as a studio so that all aspects of my work can be completed there. My equipment and other accessories represent an investment of $6,000.00. Some studios furnish music and sketch paper so that my work may be more readily duplicated. However, they do not furnish a piano or any other equipment which I require in composing music.

8. My hours of work are entirely up to me. No producer for whom I have composed music has ever indicated any concern with the number of hours I work or any of my other working conditions.

9. Because of the time limitations placed on completion of the score, from time to time I am forced to contract with other persons to perform certain aspects of my work. For example, I have on occasion arranged for other composers to orchestrate my music. In those cases in which I compensate these persons I receive no reimbursement from the producer.

10. In composing for television productions, it is fairly well understood that my services are not being rendered on an exclusive basis. While I am working on a particular episode, I feel free to do other work in the television medium, if my schedule permits.

11. After my work is completed, I deliver my handwritten scores to the producer and the music is then prepared for recording by the music copyist who is an employee of the producer. After the recording session, where I conduct the music, my contractual services are complete and my entire fee is paid in one installment. Since I am not incorporated, studios usually deduct withholding taxes, social security and disability insurance.

12. Although my contracts do not require it, I make it a practice to attend the dubbing sessions where the music is actually inserted on to the soundtrack of the television film. As an artist, I deem the dubbing session a critical step in the entire project. I attend for the purpose of protecting the integrity of the artistic contribution I have made to the entire show. I am there to see that my music is not edited or used in an inappropriate manner. I believe that attendance at the dubbing sessions is of particular importance in television productions where the producer may, in fact, be hearing the music for the first time.

13. The producer does not in anyway supervise or control my writing of the music. There is little or no contact between the producer and me subsequent to the spotting session, and generally the producer of television series such as "Mannix" hears the music for the first time at the dubbing session, i.e., at the point that my work is completed.

FRED STEINER

Sworn to before me, this

11th day of June, 1973.

Notary Public

OFFICIAL SEAL
DEBORAH E. GRINDALL
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires Nov. 10, 1975

AFFIDAVIT OF JOHN PARKER
IN SUPPORT OF PLAINTIFFS' MOTION

(Reproduced herein at pages 158a through 161a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ELMER BERNSTEIN, et al., :

Plaintiffs, :

- against - :

UNIVERSAL PICTURES, INC., et al., :

Defendants. :

----------X

72 Civ. 542

AFFIDAVIT IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

JOHN PARKER, being duly sworn, deposes and says:

1. I am one of the named plaintiffs in the above entitled action. I make this affidavit in support of plaintiffs' motion for summary judgment dismissing the affirmative defenses based on the so-called "Labor Exemption" of the Anti-Trust Laws of the United States, pleaded by the defendants. I am fully familiar with all of the facts hereinafter set forth.

2. I am a composer of musical compositions used in connection with motion pictures and television shows. I have been writing music for films since 1966 and have written scores for television productions since 1967. A great deal of my work over the past few years has been done in connection with the television series known as "Gunsmoke", produced by CBS. I have written the music for 44 episodes of "Gunsmoke". Other television productions for which I

have composed music are as follows:

Production	Producing Studio
Cannon	Quinn Martin
Medical Center	MGM
Then Came Bronson	MGM
Assignment In Vienna	MGM
Streets of San Francisco	Quinn Martin

3. I believe that my course of dealing with the "Gunsmoke" producers is fairly representative of my relationship with producers and the manner in which I generally perform my work. I am usually first contacted by the executive producer about writing the score for a particular episode. If I am interested, I screen the show, and a contract is negotiated and signed after the screening. However, since I have done so many episodes of "Gunsmoke", there is now rarely any real negotiation. After screening an episode, I make a determination as to how much music is required and where it will be used in the film. I then meet with representatives of the CBS Music Department and advise them with respect to my requirements for an orchestra. I usually select the personnel for the orchestra, and always indicate the key musicians who I want hired. At this point, a scoring date is set, usually ten days to two weeks after I have completed the screening.

4. I then commence actual composing in a sound-proof room in my home. I own all of the equipment that I require for composing, including a piano, representing a total investment of $5,000. I have never been requested to work anywhere other than at my home although on one occasion, when my home was damaged by a mud slide, CBS

furnished me with some space in which to work. Neither my working hours nor any other working conditions are supervised or controlled in any way by CBS or, in fact, by any other producer with whom I have contracted to compose music.

5. During the course of composing the score, I usually do not have any contact with the producers. After I have written the music, it is copied and delivered to the studio where it is scored and dubbed. In my experience with CBS, I have never been required to substantially change any music which I have written. I normally do not participate in the dubbing session as, in most cases, my schedule does not permit it. However, there is no question but I would be welcome at the dubbing session if I chose to attend.

6. My agreements to do "Gunsmoke" episodes are not exclusive. While composing music for these episodes I have worked on other television series assignments on other networks, such as "Streets of San Francisco", "Cannon", "Assignment in Vienna", and "Medical Center". The number of assignments I may have at any point in time is limited solely by the amount of time I have to devote to them.

7. In addition to my work on television series, I have also composed music for a feature film made for television, a picture entitled "Spanish Portrait" produced by CC100, which is the television department of CBS. My relationship with the producer was much the same as with the producer of "Gunsmoke". However, the producer of "Spanish

Portrait", was somewhat knowledgeable with regard to music and made suggestions with regard to spotting of the music (the session at which it is decided which scenes shall have music and which shall not). While I accepted these suggestions and respected his judgment, the end product was my creation and reflected my judgment.

11. After "Spanish Portrait", I was engaged to do the score for "Darker then Amber", a theatrical production of CCF Studios, also an affiliate of CBS. As in the case of the television series, my work was performed at home and without any supervision from the film makers. I had no editorial contact with the producer.

JOHN PARKER

Sworn to before me, this

11th day of June, 1973.

Mary E. Kellegrew
Notary Public

OFFICIAL SEAL
MARY E. KELLEGREW
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
MY COMMISSION EXPIRES MAY 10, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ELMER BERNSTEIN, et al., :

Plaintiffs, :

- against - :

UNIVERSAL PICTURES, INC., et al., :

Defendants. :

----------X

72 Civ. 542

AFFIDAVIT IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

JACK ELLIOTT, being duly sworn, deposes and says:

1. I am one of the named plaintiffs in the above entitled action. I make this affidavit in support of plaintiffs' motion for summary judgment dismissing the affirmative defenses pleaded by the defendants based on the so-called "Labor Exemption" of the United States Anti-Trust Laws.

2. I am a composer of musical compositions used in connection with motion pictures and television shows. Presently, the bulk of my work is in the television area. I have composed scores for weekly series, television movies and variety shows for almost all of the major producers and for many of the independents as well.

3. For the past five or six years, my work has been performed in conjunction with Alan Ferguson who is also a composer. Mr. Ferguson and I are co-owners of a corporation known as Elliott-Ferguson, Inc. and this corporation is the contracting party in all our agreements to compose music. By the terms of these contracts, the corporation agrees to furnish our services for the purpose of composing the music. Since 1969, we have composed music for the following television shows and motion pictures:

TELEVISION and TELEVISION FILM

1969-1970

Dick Van Dyke & The Other Woman
CBS Happy Days
CBS Dionne Warwick Special
NBC Jack Benny Specials 3 Shows
NBC Bracken's World
CBS Don Adams Special
ABC Don Rickles Special
ABC Everly Brothers 10 Shows
NBC The First Nine Months Special
CBS Osmond Brothers Special
CBS Tim Conway Show 13 Shows
ABC Feminist and The F[illegible] M.O.W.
CBS Super Comedy Bowl Special
NBC Pure Goldie Special-Goldie Hawn

1971

CBS The New Dick Van Dyke Show 24 Episodes
NBC The Funny Side 13 Shows
NBC The Good Life 13 Shows
NBC Carpenters (Summer Replacement) 8 Shows
NBC The Emmy Awards Show
ABC The Grammy Awards Show
NBC Jack Benny Special

1972-1973

"Imagination" 4 Specials for Georgia-Pacific
ABC The Grammy Awards Show
NBC The Emmy Awards Show
CBS The New Dick Van Dyke Show 24 Episodes
"Portable Electric Medicine Show"
Arthur Godfrey

CBS "Judd Strunk's General Store"
The Muppet Musicians of Bremen
Bind Crosby Christmas Show
Robert Young Special
Jack Benny Show
Playmates - ABC M.O.W.
Everyman Needs One - ABC M.O.W.
Man Without A Country - ABC M.O.W.
Birds of Prey - CBS M.O.W.
Banacek - NBC
The Rookies - ABC

MOVIES

"Where's Poppa?" - United Artists
"Support Your Local Gunfighter" - United Artists
"Get To Know Your Rabbit" - Warners
"Myra Breckinridge" - 20th Century Fox
"T.R. Baskin" - Paramount

4. After Elliott-Ferguson, Inc. enters into a contract with a producer, Mr. Ferguson and I decide upon an allocation of the work between us. On occasion, our corporation will retain the services of other composers who work under our supervision. The producer is not consulted regarding the allocation of work nor is he consulted or, in fact, even advised when the corporation retains others to assist us.

5. When a producer wishes to retain the services of our corporation he, in the ordinary case, initially contacts Ferguson or myself or our manager, who is employed by the corporation, and advises us of the nature of the production. If we are interested in proceeding further, either Ferguson or myself or both of us attend the screening with the producer. It is after the screening or several screenings that a commitment is made to compose the music.

Generally, from the time of the screening to the scoring of the production, our only contact with the producer is with the music copyist and music editor to whom we deliver our work. During the actual creative process, we generally do not consult with the producer or director of the show, and they usually hear the music for the first time at the scoring session.

6. Our composing is performed at the offices of our corporation. All office expenses, including rent, are paid by the corporation. The corporation also owns the equipment we use, namely, piano, recorders, office equipment, etc. This equipment represents an investment of more than $10,000.00.

7. The corporation has also provided our services for composing music for motion pictures produced for theatrical exhibition. One of the additional items which are negotiated in motion picture contracts is a schedule for the payment of the corporation's fee. On occasion, as in the case of the motion picture entitled "Where's Poppa", the agreement provided that one half of the fee was to be paid in advance, with the balance to be paid when the expenses of the production have been recouped.

8. Whether our services are performed in connection with a television series, a television movie, a variety show for television or a motion picture to be exhibited theatrically, the time when and the place where our work is performed have always been left to our discretion. In no case has the producer even attempted to

to dictate our working conditions, the place where we are to work, our working hours or any other conditions relating to where, how, or when we compose our music. Our corporation frequently contracts with more than one producer to compose music during the same period of time.

9. Finally, it should be noted that the payments which are made to our corporation are made without deduction for any withholding taxes or other personal deductions. The gross amount negotiated is paid to the corporation by the producer.

JACK ELLIOTT

TO 447 C
(Individual)

TI

STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss.

On June 12, 1973 before me, the undersigned, a Notary Public in and for said State, personally appeared Jack Elliott,

to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Signature

Ethel Singer
Name (Typed or Printed)

OFFICIAL SEAL
ETHEL SINGER
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Mar. 29, 1976

13107 Ventura Blvd., Studio City, CA. 91604

(This area for official notarial seal)

STAPLE HERE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ELMER BERNSTEIN, et al. :

Plaintiffs, :

- against - :

UNIVERSAL PICTURES, INC., et al., :

Defendants. :

----------X

72 Civ. 542

AFFIDAVIT IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

FRED KARLIN, being duly sworn, deposes and says:

1. I am one of the named plaintiffs in the above entitled action. I make this affidavit in support of plaintiffs' motion for partial summary judgment dismissing the affirmative defenses pleaded by the defendants based on the so-called "Labor Exemption" of the United States Anti-Trust Law.

2. I am a composer of musical compositions used in connection with motion pictures. The music which I compose constitutes musical scores, source music and, songs for motion pictures.

3. I began composing for motion pictures in or about September, 1966. Listed below are the motion pictures for which I have composed the music since I first began my career. Also listed are the studios which produced the picture:

Motion Picture	Studio
Up The Down Staircase	Warners
Yours, Mine and Ours	United Artists
The Stalking Moon	National General
The Sterile Cuckoo	Paramount
Cover Me Babe (unreleased)	Twentieth Century Fox
Lovers and Other Strangers	ABC Film Corp.
The Baby Maker	National General
Mastermind (unreleased)	ABC Film Corp.
Believe In Me	MGM
The Marriage of a Young Stockbroker	Twentieth Century Fox
The Little Ark	Cinema Center Films
Every Little Crook and Nanny	MGM

4. Since June 1971, my services have been provided to the film producers by a corporation of which I am the sole shareholder. In dealing with the motion picture producers, the corporation contracts to provide the services of Fred Karlin for the purpose of composing musical scores, and the corporation is paid a fee for providing these services.

5. I am not now, nor have I ever been, an employee of any of the motion picture studios or television networks which have produced the pictures for which I have composed the music. I work solely as an independent contractor. The contracts which my corporation enters into with the producers state that the contract relationship thus created is that of an employer and employee. I have had my corporation execute these contracts only because the producers insist upon it. Nevertheless, it is clear that neither my corporation nor I perform services as employees. The contract does not provide for any of the

benefits which are common to true employment contracts. For example, there is no provision for vacation pay, sick pay, paid holidays, pension benefits or health and welfare benefits. Moreover, as the remainder of this affidavit will demonstrate, I am not subject to the supervision and control of the producer. From the beginning to the end, the course I follow in composing music is that of an independent contractor, and not as an employee.

6. A producer who wishes to utilize my services usually contacts my agent and presents a proposal. On some occasions, the initial contact is made directly to me. For example, when I was engaged to create the musical score for "The Sterile Cuckoo", I was contacted directly by Alan Pakula for whom I had previously written a score. After the producer presents his offer, I review the film at a screening session. However, if the film is not ready for screening, I read the screenplay instead. If I am not satisfied with the film after the screening or after I have read the screenplay, or if for some other reason I feel that it is the type of film for which I would rather not compose the music, I decline the offer. On the other hand, if I am satisfied that the film is a vehicle for which I can and would like to compose the music, I accept the offer. It is the producer's decision to select me rather than another composer, but the decision to accept or reject the opportunity to compose the music is solely mine.

7. As stated above, my corporation contracts with the producer to provide my services and, in turn, the corporation receives the agreed upon compensation. Payments are made directly to the corporation without deduction of any kind for taxes, social security or other employee benefits. The usual agreement with a producer provides that the fees will be paid in thirds. One-third is paid on what is known as the start date, which is the day on which I have a timing or breakdown session with the movie makers to determine where the music will appear in the film. The second one-third of the fee is usually paid half way between the start date and the anticipated scoring date, which is the date on which the music is performed by an orchestra and recorded. The final one-third is paid on completion of the scoring. The timing of the payments relates solely to the progress I achieve in composing the music.

8. The agreements made between my corporation and the producers provide that my services will be provided on a non-exclusive basis. Accordingly, I may have two or more projects to work on at the same time and while I usually work on one project at a time, I have had, on at least one occasion, three overlapping projects, namely "Marriage of a Young Stockbroker", "Believe In Me", and "The Little Ark".

9. The composing of music is a creative process, and the process begins with the first screening or reading of the screenplay. Even before I discuss the matter with the producer, definition of the type of music appropriate to the film is formulated in my own mind. Thus, when I first discuss the composition of the music with the producer at the timing session, I have a fairly well defined concept of the type of music I will compose.

10. It is at the timing session that the producer, director and I determine which scenes in the film will have music and which will not. At these sessions, the film makers may try to convey to me the mood they have attempted to portray in particular scenes and this may be of some aid to me in further defining or refining my view of the music I will provide for the film.

11. Rarely has any attempt been made by a producer to direct me in the use of any particular musical devices or instruments. On the rare occasion when a suggestion has been made along these lines, I have ultimately made the decision relying upon my own judgment. I share only a limited amount of my thinking with the film makers. I discuss with them only that part of my thinking which they can truly understand, and the discussion is usually limited to the location of music in the film and very general discussions of the kind of music which would enhance the finished film. Ordinarily, my last communication with the film makers before I begin composing occurs at the timing sessions.

12. After the timing session, I return to my home where I do all my composing and orchestrating. I have never been asked by a producer to perform my work on the studio premises, although I believe that some of the studios do have facilities where such work may be performed. However, the producers with which I have had contact are not in any way concerned with where or when I work on a composition.

13. I work with a black and white copy of the film on a device known as a Moviola. This device enables me to view the film in my own home. My corporation owns the Moviola which represents an investment of approximately $3,500.00 My corporation also owns a film rewind device which enables me easily to review segments of the film in which I am interested. For the actual composing, I use an electronic keyboard which cost $2,000.00 and a Steinway piano which cost $5,000.00. I also use other equipment located at my home, including tape recording devices and accessories in composing the music. My corporation purchased all of this equipment and it defrays the costs of maintaining this equipment as well as the room in my home which has been set aside solely for my work.

14. When I am composing for a film, I work 7 days a week and from 8 to 18 hours a day. The average project requires approximately 6 weeks. I use my own scoring paper and other materials when composing. During all of this time, I work alone and usually with little contact with the producer or the director, other than discussions regarding changes in the film itself.

15. The finished product of my labors is original. Naturally, I try to please the film makers in the same way that an architect attempts to design a building which will be pleasing to its owner. From time to time, I have agreed to requests made by the producer. There was one occasion where a director selected the music for a particular scene when I had composed it for another. This occurred in "Every Little Crook and Nanny". This incident, however, represents the rare exception to the general rule. The more usual situation occurred in connection with my composing of the music for "Lovers and Other Strangers" where the producer heard the music only once before the actual dubbing session and requested no changes of any significance.

16. Some composers, including myself, are sometimes required, in order to meet their commitments, to hire third parties to perform some of the routine technical tasks involved in composing music for films. For example, my corporation will, on occasion, hire someone to do music secretarial work, such as transferring the timings from my sketches to my orchestrations. My corporation hires these people, and is responsible for payment of their compensation. The studios or producers which retain my corporation, do not pay for the cost of such assistance, do not care if such help is needed, are not even aware that such help has been obtained.

17. When the music for a film has been completed, I, in accordance with the agreement made by my corporation, act as conductor at the scoring session for which, incidentally, I receive a separate fee as a member of the American Federation of Musicians. Generally, I select the musicians for the orchestra. Some of the studios ask the composer to select certain musicians who the studio has on "first call". However, the final decision on the selection of the musicians and, in particular, the musicians for the principal parts of the work, is left to the composer.

18. As noted above, at completion of the scoring session the final one-third payment is made to my corporation. However, I also attend the dubbing session, at which time the music is actually put on the sound track of the film. This is not a requirement of my contract but I am concerned about the project's welfare and follow my work through until the dubbing is completed.

19. From the first screening to the dubbing, I am not subject to any supervision or control by the producer or director. The music is my creation. The only contributions made by the producer are in the form of suggestions which I am free to accept or reject.

20. The procedures which I have described in this affidavit do not materially vary from film to film or from producer to producer. My status is that of an independant contractor in all instances.

Fred Karlin
FRED KARLIN

Sworn to before me, this
1st day of June, 1973.

Notary Public

STATEMENT PURSUANT TO GENERAL RULE 9(g)
SUBMITTED BY MOTION PICTURE COMPANY DEFENDANTS

(Reproduced herein at pages 177a through 180a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al., Plaintiffs, - against - UNIVERSAL PICTURES, INC., et al., Defendants.	72 Civ. 542 S.J.R. STATEMENT IN OPPOSITION TO DEFENDANTS' GENERAL RULE 9(g) STATEMENT

The motion picture company defendants (the "defendants") in response to plaintiffs' Rule 9(g) Statement, state:

1. Deny the facts alleged in paragraph 1 and contend that:

(a) the right, title and interest, including the copyright, of musical compositions written by composers* for motion pictures and television (the "rights") vested in defendants as a matter of law;

(b) insofar as the rights were retained by defendants, such retention was pursuant to a collective bargaining agreement freely negotiated and entered into by the Composers and Lyricists Guild of America ("CLGA"), representing the composers, and the Association of Motion Picture and Television Producers ("AMPTP"), representing defendants.

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* The term "composers" includes lyricists.

2. Deny the facts alleged in paragraph 2 and contend that the rights in the music, other than those required to produce the motion picture or television show, were divided between the composers and defendants.

3. Deny the facts alleged in paragraph 3 and contend that composers were given a role in the selection of the music publishing company through the various collective bargaining agreements which require that the publisher be a member or licensor or affiliate of the same Society as the composer. Moreover, in some cases the rights were assigned to a publishing company owned or controlled by the composer.

4. Deny the facts alleged in paragraph 4 and contend that the music publishing companies affiliated with defendants are engaged in businesses which are integrated with the motion picture and television business of defendants.

5. Deny the facts alleged in paragraph 5 and contend that defendants have always been willing to contract with composers without any preconditions and, since 1960, on the basis of the terms set forth in the various collective bargaining agreements.

6. Deny the facts alleged in paragraph 6 and contend that defendants became the registered copyright owner of the musical composition by operation of law.

7. Deny the facts alleged in paragraph 7.

8. Deny the facts alleged in paragraph 8 and contend that the relationship between defendants and composers has been one of employer and employee. Defendants further contend that the CLGA has consistently represented itself to be a "labor

organization" within the meaning of the National Labor Relations Act and that its members were "employees" of defendants.

9. Deny the facts alleged in paragraph 9.

10. Admit that the last Minimum Basic Agreement between the CLGA and the AMPTP expired in November 1971 as alleged in paragraph 10 but contend that at all times since that date defendants have been ready and willing to enter into collective bargaining negotiations for a new Minimum Basic Agreement.

11. Defendants contend that the instant controversy involves a labor dispute between the parties which, in the past, has always been settled through the collective bargaining process.

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'A Member of the Firm

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AFFIDAVIT OF SIMON ROSE
IN OPPOSITION TO PLAINTIFFS' MOTION

(Reproduced herein at pages 182a through 200a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al.,	:	
Plaintiffs,	:	(S.J.R.) 72 Civ. 542
- against -	:	
UNIVERSAL PICTURES, INC., et al.,	:	AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND A PRELIMINARY INJUNCTION
Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

SIMON ROSE, being duly sworn, deposes and says:

1. I am a member of the firm of Phillips, Nizer, Benjamin, Krim & Ballon, attorneys for defendants Columbia Pictures Industries, Inc., Twentieth Century-Fox Film Corporation, Warner Brothers, Inc., Warner Communications, Inc., United Artists Corporation and Transamerica Corporation, and am familiar with all prior proceedings herein, as well as with recent related proceedings before the National Labor Relations Board ("NLRB"). On behalf of all the motion picture company defendants, I submit this affidavit in opposition to plaintiffs' motion, pursuant to FRCP 12(f), 56 and 65, for an order striking or, in the alternative, granting summary judgment dismissing defendants' affirmative defenses based upon the labor exemption to the anti-trust laws and the primary jurisdiction of the NLRB, and for a preliminary injunction.

2. At the oucset, I would point out that insofar as plaintiffs' motion relies on Rule 12(f), it is untimely in that it was not made within 20 days after service of the answers to which it is directed, nor are affidavits permitted in this District on such a motion. Moreover, as demonstrated in the accompanying Memorandum of Law, Rule 56 has no application to a motion seeking dismissal of affirmative defenses.

3. Even if plaintiffs' motion did not suffer from these fatal defects, it is a fundamental rule that summary judgment must be denied if any triable issue of fact exists. A mere comparison of the conflicting Rule 9(g) Statements filed by the respective parties makes it abundantly clear that most of the essential facts upon which plaintiffs rely are in sharp dispute. Thus, defendants challenge plaintiffs' assertion that defendants have demanded all rights to plaintiffs' compositions; that defendants have refused to contract with composers* who do not agree to certain standard terms; that as a result of standard terms imposed by defendants on composers, defendants are empowered to become the registered copyright author of the compositions; that plaintiffs are independent contractors, and that defendants have refused to contract with a composer unless he acknowledges in writing that he is an employee for hire.

4. In the course of this affidavit I shall demonstrate that these material facts, which plaintiffs contend are not in

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* The term "composers" includes lyricists.

issue, are hotly contested by defendants, thus mandating denial of the motion. Indeed, the documentary evidence to which I shall refer is so compelling as to indicate not only that these facts are in issue but that, on a plenary trial, the issues will be resolved in favor of defendants.

History of Collective Bargaining Agreements Between the Parties

5. In August, 1955 the Composers and Lyricists Guild of America (the "CLGA"), a labor organization, was certified by the NLRB as the exclusive collective bargaining agent for composers (Exhibit 1). Since that time, the CLGA and the motion picture company defendants, represented by the Association of Motion Picture and Television Producers (the "AMPTP"), have participated in literally dozens of collective bargaining sessions with respect to wages, hours and other conditions of employment of the CLGA members employed by these defendants.

6. Over the years, these sessions have resulted in three collective bargaining agreements, known as Minimum Basic Agreements. The first agreement covered the period June, 1960 through May 31, 1964, the second January 1965 through December, 1966 and the last July 1, 1967 through November 30, 1971.

7. During the month of November, 1971 several collective bargaining sessions were held with a view to negotiating another Minimum Basic Agreement, but at midnight on November 30, 1971 the CLGA commenced a strike against the member producers of the

AMPTP. At the same time, the CLGA filed an unfair labor practice charge against the AMPTP with the NLRB (Exhibit A to the Boren affidavit), alleging that the AMPTP had refused to bargain in good faith regarding the terms and conditions of employment of its member employees.

8. The AMPTP countered with an unfair labor charge against the CLGA (Exhibit B to the Boren affidavit), asserting that the CLGA had struck without giving the requisite statutory notice and that it had struck over a non-mandatory subject of bargaining, i.e., the rights of the parties in the music and lyrics written by the composers for motion pictures and television shows.

9. In February, 1972 plaintiffs, all of whom concededly are members of the CLGA, commenced this action which involves the very rights over which the CLGA bargained to an impasse and struck. One month thereafter, the CLGA withdrew its unfair labor charge against the AMPTP.

10. As to the AMPTP's charges against the CLGA, the NLRB found that the CLGA had in fact failed to give the requisite statutory strike notice, but it dismissed the charge relating to the "rights" issue on the ground that the demand of the CLGA in this respect was a mandatory subject of bargaining (Exhibit E to the Boren affidavit).

11. The instant motion ignores this history of collective bargaining, proceeding as if the events of the past 20 years had never occurred. It pretends that the CLGA is not a union, that plaintiffs were not employees of defendants but independent

contractors and that the issues in this action do not involve a labor dispute.

The CLGA Has Been a Union Since 1955 And Its Members Have Always Been Employees of the Motion Picture Company Defendants

12. For plaintiffs to succeed on this motion to dismiss the affirmative defenses they must establish, as undisputed facts, that the CLGA is not a union and that the members of the CLGA are not employees of defendants but independent contractors. Plaintiffs implicitly recognize this burden at page 33 of their brief, where they state:

> "Defendants' claim to the benefit of the labor exemption is premised on a validly existing employer-employee relationship. If this relationship is non-existent, the labor exemption is unavailable to them."

13. In characterizing the members of the CLGA as independent contractors rather than employees, plaintiffs have committed a most amazing volte-face which flies in the face of overwhelming documentary evidence to the contrary. Since the documents to which I shall refer were produced from the CLGA's own files, it really is frivolous for plaintiffs to assert as an undisputed fact, as they do in paragraph 8 of their Rule 9(g) Statement, that "[I]n their relationship with the defendants, plaintiffs act as independent contractors, not as employees".

14. Concomitant with plaintiffs' claim that the CLGA members were not employees, is their implied contention that the

CLGA has never been a labor union (Pltfs' Br. p. 8). Again, not only does this create a basic factual issue between the parties but numerous documents produced by the CLGA establish affirmatively that from the date of its certification in August, 1955 until at least the date of the filing of the complaint herein the CLGA has steadfastly asserted its position as a labor organization.

15. I respectfully direct the Court's attention to the CLGA documents described below. They are merely representative of the scores of documents which support defendants' contentions that the CLGA has at all times been, and has conducted itself as, a labor organization and that its members have been employees of defendants rather than independent contractors. At the very least they establish that genuine factual issues exist, material to the motion and compelling its denial:

(a) The Guild's Petition to the NLRB, dated May 5, 1955 (Exhibit 2)

The Guild requests that it be recognized as the bargaining representative for composers, claiming that "A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner, and Petitioner desires to be certified as representative of the employees for the purposes of collective bargaining, pursuant to section 9(a) and (c) of the act".

(b) NLRB Notice of Election, July 1955 (Exhibit 3)

This notice from the NLRB, under a heading "Rights of Employees", informs the composers of their rights as employees and of the purposes and time of the consent election.

(c) NLRB "Certification of Representatives", dated August 19, 1955 (Exhibit 4)

This certifies that the "Composer's Guild of America ... pursuant to Section 9(a) of the National Labor Relations Act ... is the exclusive representative of all the employees in the unit [defined as composers for certain motion picture producers] ... for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment".

(d) CLGA Bulletin entitled "What is CLGA?" (Exhibit 5)

In this document the CLGA is described as "a labor union, duly certified by the NLRB to represent composers and lyricists in their employment relationships with theatrical and television motion picture producers ... to insure the protection of their rights arising from composition; to engage in collective bargaining on behalf of composers and lyricists...."

(e) Letter, March 21, 1963, from Georgia Hanni (CLGA Executive Director) to Ed Colyer (Twentieth Century-Fox Film Corporation) (Exhibit 6)

This letter written "to avoid unnecessary confusion in the future" and afford "clarification of coverage under the Minimum Basic Agreement", explained:

> "It is undisputed that music already in existence at the time of approaching a composer for employment and created for a purpose unrelated to the motion picture in question is not governed by the Guild Agreement. Where, however, a composer or lyricist creates music as a result of solicitation by a Producer, and where it is anticipated that the music will be used in connection with a specific motion picture, whether so used or not, such composer or lyricist is an employee of the Producer and the terms of his employment are within the purview of the Guild Agreement. The form of his contract, which may establish certain other legal relationships, e.g., ownership and/or rights, is irrelevant and does not alter the underlying relationship involving the personal services rendered." (empha. supplied)

(f) Memorandum to all Guild members, July 22, 1963 (Exhibit 7)

This memorandum decries the use of independent contractor agreements and states:

> "A device by some independent theatrical film producers to undermine your CLGA collective bargaining agreement is endangering the Guild. Members are therefore urged, in dealing with independents, to ask for straight-out employee contracts. This sets up the employer-employee relationship--the only one by which CLGA members can get the benefits and protection of their Agreement with producers".

(g) CLGA Report, December 24, 1963 (Exhibit 8)

Page 14 of this report notes that "At a time when your performing rights royalties are under attack in the Courts", all members should insist on "an employer-employee contract, NOT the independent contractor form".

(h) "Union shop" letters from the CLGA to producers (Exhibit 9)

Several of these CLGA letters notify producers that designated composers "have been employed by at least one of the members of the Association of Motion Picture Producers, Inc. since the effective date of the collective bargaining agreement between us" and therefore must become members in good standing of the Guild in accordance with Article 5(a) of the MBA. One letter informs defendant Twentieth Century-Fox Film Corporation that certain named composers "have been suspended from membership in the Guild for nonpayment of Guild dues" and cannot be considered for future employment until they reinstate themselves as members in good standing.

(i) Statement of Leonard Zissu on behalf of The Composers and Lyricists Guild of America to The House of Representatives Committee on the Judiciary on May 28, 1965 (Exhibit 10)

Mr. Zissu, one of the attorneys for plaintiff

herein, informed the Committee: "The Composers and Lyricists Guild of America, Inc. (CLGA) is a labor union or guild representing approximately 400 Composers and lyricists creating music for the motion picture and television industry in the United States." He also observed: "most of the music composed for the motion picture and television industries is prepared at the direction of the producers...."

(j) Letter, June 7, 1968, from Ted Cain (Executive Director CLGA) to Al Chamie (Vice President and General Counsel AMPTP) (Exhibit 11)
Cain asserts that the theatrical producers' "present method of operation calls for a definite employer-employee relationship".

(k) Employee's withholding exemption certificate for plaintiff Elmer Bernstein (Exhibit 12)
This certificate is but one of many filed by plaintiffs with defendants and is illustrative of the fact that plaintiffs regarded themselves as "employees".

(l) CLGA Directory, 1969 (Exhibit 13)
The Directory asserts: "CLGA is a labor union, duly certified by the NLRB to represent composers and lyricists in their employment relationships with

producers of theatrical and television motion pictures."

(m) Letter A eement, dated May 28, 1969, between Henry Mancini Enterprises, Inc. and CLGA, addressed to the Motion Picture Health and Welfare Fund and to the Directors of the Motion Picture Industry Pension Plan (Exhibit 14)

In this agreement CLGA represented that it is a union; paragraph 2 notes that a collective bargaining agreement is in effect covering the employee unit [i.e., composers] "represented by such undersigned union".

(n) Form LM-2, Labor Organization Annual Report filed by the CLGA with the U.S. Department of Labor on January 5, 1972 (Exhibit 15)

Each year since its creation the CLGA has filed with the Labor-Management Services Administration of the U.S. Department of Labor the annual report which the Department requires of labor organizations. This is an example of such LM-2 forms filed by the CLGA.

(o) Letter, January 6, 1972, from Ted Cain to Jerry Spain, Vice-President, Local 6, American Federation of Musicians (Exhibit 16)

The letter advises that CLGA, "a duly NLRB authorized Union representing the composers and lyricists working for Producers making Theatrical and Television Motion Pictures through-out the United States, is on strike...."

(p) Letter, January 18, 1972, from Ted Cain to George Tipton, a named plaintiff (Exhibit 17)

This letter reminds Mr. Tipton of the CLGA work rule which prohibits members from working for an employer who is not a signatory to a minimum basic agreement and, that he is relieved of any obligation to MGM "during a strike under our present conditions".

(q) Letter, dated February 2, 1972, from Ted Cain to Charles Boren (Exhibit 18)

Mr. Cain informed the AMPTP that, despite the expiration of the 1967 MBA, the CLGA would permit its members to work only for employers who comply with the minimums therein. This can only mean that the CLGA continued to assert its union status - otherwise its members were combining to enforce an illegal boycott.

The Controversy Involves a "Labor Dispute" over Rights which have been the Subject of Collective Bargaining

16. Another serious contested issue between the parties is the question as to whether or not the controversy involves a "labor dispute". I shall discuss below the facts and documents which support defendants' contention that the controversy does involve such a dispute, thereby establishing that a genuine issue of fact exists precluding summary judgment.

17. In his affidavit in opposition to the motion Charles Boren, formerly Executive Vice President of the AMPTP, attests

to the fact that the subject of rights in the compositions written for the producers by the composers was constantly discussed at the collective bargaining sessions between the CLGA and the AMPTP. As a result, several concessions were made by the producers and they were incorporated in the minimum basic agreements to which I have referred. I respectfully direct the Court's attention to paragraphs 15 through 19 of the Boren affidavit and I am attaching copies of the Minimum Basic Agreements of 1960, 1965 and 1967 to which he refers as Exhibits 19, 20 and 21, respectively.

18. In the course of the bargaining sessions held in an attempt to arrive at a fourth minimum basic agreement, the CLGA representatives requested still further concessions on the subject of rights. Indeed, it was on this very issue that the CLGA struck the motion picture and television film production industry on November 30, 1971.

19. In addition to striking, the CLGA filed an unfair labor practice charge against the AMPTP alleging that the AMPTP had refused to bargain in good faith. A counter charge was filed by the AMPTP against the CLGA contending, inter alia, that the CLGA had struck over a non-mandatory subject of bargaining. The CLGA subsequently withdrew its charge and the NLRB dismissed the AMPTP charge to which I have referred on the ground that it "involves the relationship between employer and employee, and settles 'term and condition' of employment, i.e., the total compensation accruing to the composers from their unit work".

20. Further support for defendants' position is to be found in the following documents produced by the CLGA:

(a) Letter, September 3, 1959, Abraham Marcus to H.L. Walter (General Manager of Britain's Performing Right Society) (Exhibit 22)

This letter shows that even before the first MBA composers did not assign all right, title and interest in musical compositions to film producers. Mr. Marcus stated:

> "Your understanding that U.S.A. composers assign their entire copyright to film producers is not in accord with the facts. While a number of the lesser known composers may do so, the more important ones generally are able to protect the performing rights, in one way or another. For example, George Duning's contract with Columbia Pictures Corporation [a defendant herein] contains the following clause:
>
> [Reservation with respect to performing rights]
>
> "Columbia Pictures Corporation includes these provisions in its contracts with composers -- certainly in the contracts with all those composers represented by me".

In this document, Mr. Marcus acknowledged that the CLGA "is seeking to obtain a collective bargaining agreement with motion picture producers on behalf of all composers", adding that "[w]e have been attempting to negotiate a performing right reservation clause to insure for all composers (including those now unable to reserve rights) the collections of performance revenues in foreign countries". The

various collective bargaining agreements have "insured" these performance rights for composers.

(b) Letter, September 1, 1961, Leith Stevens (Guild President) to 16 members of the Guild, including Elmer Bernstein (Exhibit 23)

Mr. Stevens reported that performing rights societies have indicated that "the [rights] clause we have achieved in our agreement will redound to the benefit of all composers, everywhere".

(c) CLGA Report, September 3, 1963, Pages 1-3 (Exhibit 24)

In reviewing Guild accomplishments, President David Raksin emphasized the fight waged to obtain a share of the performance rights for composers. Noting that performance rights are "an important source of income", and that agreements must "protect us without impairing the producers' legitimate position", Raksin stated that "the CLGA, by its performing rights clause in the AMPP contract [MBA], established for the first time their formal right to something that had previously been no more than a precarious concession".

(d) CLGA Press Release, November 15, 1971 (Exhibit 25)

In this release, the CLGA announced that the Guild had voted to strike the AMPTP. It acknowledged that the Guild "has been negotiating with the producers

association for a new Collective Bargaining Agreement", and attributed the strike to "an impasse ... on the issue of Copyright ownership".

(e) Letter, November 19, 1971, CLGA to all CLGA members (Exhibit 26)

The letter publicizes an executive board decision that no composer shall work for any producer member of the AMPTP until a satisfactory new agreement is negotiated and ratified by the CLGA membership. The letter further states that the "most important" change demanded in the 1967 MBA pertains to the "ownership by the composer of the music ... ownership of the copyright, not just ownership of publication".

(f) CLGA Press Release, February 1, 1972 (Exhibit 27)

This release announces that the general membership of the CLGA overwhelmingly "voted to authorize its legal counsel to file an Anti-Trust Suit against the ... [AMPTP]". It specifically acknowledges that "This unprecedented action shifts the composers and lyricists struggle for ownership for all of their rights from the labor to the legal arena".

(g) CLGA Press Release, February 7, 1972 (Exhibit 28)

In this release, Elmer Bernstein, Guild President

and a named plaintiff, attributes the filing of the CLGA antitrust suit to the composers' refusal to sign agreements which they believe deprive them of rights in music.

(h) Notice to Mediation Agencies and covering letter, Abraham Marcus to Bert Walter, Commissioner, Federal Mediation and Conciliation Board, December 1, 1971 (Exhibit 29)

The filing of this Notice confirms that the parties were trying to resolve a "labor dispute"; to that end they enlisted the help of the Federal Mediation Service. Moreover, the Notice refers to an "existing collective bargaining contract", identifies the CLGA as a "union", and gives the total number of "employees" covered by the contract as 480.

(i) Report of Trade Dispute by Union Directly Involved, filed with the Department of Employment, Department of Human Resources Development, State of California, January 5, 1972 (Exhibit 30)

This Report was filed by the CLGA in response to the request of the Department of Employment that the Guild furnish it with all pertinent facts concerning "a trade dispute ... now in progress" so that the Department could determine the eligibility of composers for unemployment benefits. In the Report, the CLGA identified as "the principal issues" of the "trade dispute" "Wages, Ownership of Copyright, Working Hours and Conditions, Pension and Health & Welfare". The CLGA

also stated that the "trade dispute" had begun in September, 1969 and that a picket line was established by the "union" on December 30, 1971.

(j) Work Stoppage Report, filed by the Guild with the U.S. Department of Labor, January 17, 1972 (Exhibit 31)

In response to a request for information by the U.S. Department of Labor, the Guild filed a report identifying CLGA as the "Union involved" and stating that the "MAJOR issues in dispute" were "Ownership of Copyright, Working conditions, Salaries".

21. In final refutation of plaintiffs' contention that the controversy does not involve a labor dispute, and that this is an undisputed fact, I again refer to the CLGA's own press release of February 1, 1972:

> "This unprecedented action [the filing of this anti-trust suit] shifts the composers and lyricists struggle for ownership for all of their rights from the labor to the legal arena."

Plaintiffs' Motion for a Preliminary Injunction Should be Denied

22. In seeking a preliminary injunction, plaintiffs ask that this Court, without having heard any testimony, abrogate the copyright statute and case law and dictate the terms of contracts in an industry that has been involved in collective bargaining for two decades. Plaintiffs' own documents confirm that they are not entitled to such drastic relief: none of plaintiffs'

moving affidavits even refers to much less supports their application for an injunction. The memorandum of law submitted herewith sets forth the well-established authorities which preclude granting an injunction that would change the status quo in the circumstances presented.

Sworn to before me this
20th day of November,
1973.

Simon Rose

Simon Rose

Notary Public

DIANE L. SIELSKI
Notary Public, State of New York
No. 31-8791520
Qualified in New York County
Commission Expires March 30, 1974

EXHIBIT 1 - CERTIFICATION OF CLGA -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

In the Matter of

ALLIED ARTISTS PRODUCTIONS, INC.,
COLUMBIA PICTURES CORPORATION,
LORIS INCORPORATED,
PARAMOUNT PICTURES CORPORATION,
REPUBLIC PRODUCTIONS, INC.,
RKO RADIO PICTURES, INC.,
TWENTIETH CENTURY-FOX FILM CORPORATION,
UNIVERSAL PICTURES COMPANY, INC.
and WARNER BROS. PICTURES, INC.

and

COMPOSERS GUILD OF AMERICA

Case No. 21-RC-4012

CERTIFICATION OF REPRESENTATIVES

Pursuant to the terms and provisions of the Agreement for Consent Election entered into by and between the parties in the above-entitled matter, the undersigned Regional Director of the National Labor Relations Board conducted an election by secret ballot as therein provided. No objections were filed to the Tally of Ballots furnished to the parties, or to the conduct of the election.

Pursuant to authority vested in the undersigned by the Agreement for Consent Election and by the National Labor Relations Board, it is hereby certified that a majority of the valid ballots has been cast for

COMPOSERS GUILD OF AMERICA

and that pursuant to Section 9 (a) of the National Labor Relations Act said organization is the exclusive representative of all the employees in the unit defined in the Agreement for Consent Election for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Los Angeles, California,
On the 19th day of August, 1955,

On behalf of

NATIONAL LABOR RELATIONS BOARD

Acting Regional Director for Twenty-First Region
National Labor Relations Board

GPO 53-40244

EXHIBIT 2 - CLGA PETITION TO NLRB, MAY 5, 1955 -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

LRB-661
(6)

Budget Bureau No. 64-R011.5.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

PETITION

When this Petition is filed by a labor organization or by an individual or group acting in its behalf, the Petition will not be processed unless the labor organization and any national or international of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

If more space is required for any one item, attach additional sheets, numbering item accordingly.

ATTACHMENTS REQUIRED.—Except when this Petition is filed by an employer under section 9 (c) (1) (B) of the Act, there must be submitted with the Petition proof of interest in the form of dated authorization or membership application cards, or other documentary evidence signed by employees, together with an alphabetical list of their names.

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

Compliance Status Checked By:

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority:

1. Purpose of this Petition (*Check only the one box which is appropriate*)

A. [X] RC—Certification of Representatives (Individual, Group, Labor Organization).—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner, and Petitioner desires to be certified as representative of the employees for purposes of collective bargaining, pursuant to section 9 (a) and (c) of the act.

B. [ ] RM—Representation (Employer).—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner as defined in section 9 (a) of the act.

C. [ ] RD—Decertification.—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative as defined in section 9 (a) of the act.

D. [ ] UD—Withdrawal of Union Shop Authority.—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

2. Name of Employer	Employer Representative to Contact	Phone No.
See list attached		

3. Address(es) of Establishment(s) Involved (Street and number, city, zone, and State)

See list attached

4a. Type of Establishment (Factory, mine, wholesaler, etc.) Producers of motion pictures

4b. Identify Principal Product or Service Motion pictures

5. Description of Unit Involved (*If more space is needed, continue on another sheet*)

Included

Composers of music and/or words in connection with music

Excluded

All others

6a. Number of Employees in Unit

130
~~319~~

6b. Is This Petition Supported by 30% or More of the Employees in the Unit?

[X] YES [ ] NO

(*If you have checked box 1 A (RC) above, check and complete EITHER item 7a or 7b, whichever is applicable*)

7a. [X] Request for recognition as Bargaining Representative was made on ~~May 5, 1955~~ (Month, day, year) and Employer declined recognition on or about ____ (Month, day, year) (*If no reply received, so state*) No reply received

7b. [ ] Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent (*If there is none, so state*) None

Name	Affiliation
Address	Date of Recognition or Certification

9. Date of Expiration of Current Contract, if Any (Show month, day, and year)

10. If You Have Checked Box 1 D (UD) Above, Show Here the Date of Execution of Agreement Granting Union Shop (month, day, and year)

11. Parties or Organizations Other Than Petitioner Which Have Claimed Recognition as Representatives, and Other Unions Interested in the Employees Described in Item 5 Above (*If none, so state*)

Name	Affiliation	Address	Date of Claim (Required only if Petition is filed by Employer)
None, except that for functions other than those described above, part of the employees are represented by: American Federation of Musicians		570 Lexington Ave., New York 22, N.Y.	
and part by: Writers Guild of America—West		8702 Sunset Blvd., Los Angeles, Cal.	

12. If you have checked box 1 A (RC) above, list locals or other affiliates of Petitioner having or soliciting members among the employees in the unit involved; or which will serve such employees in the event the Petitioner is certified as their representative (*If none, so state*)

None

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Composers Guild of America
(Petitioner and affiliation, if any)

By [signature] President
(Signature of representative or person filing petition) (Title, if any)

Address 12021 Sarah St., North Hollywood, Calif. HO-2-1351 - TU-2-5377
(Street and number, city, zone and State) (Telephone number)

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE [illegible])

EXHIBIT 2 - CLGA PETITION TO NLRB, MAY 5, 1955 -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

(attachment to
Form NLRB-502 -
Questions 2. and 3.)

Allied Artists Productions, Inc.	1924 S. Vermont St., Los Angeles
Columbia Pictures Corporation	1438 N. Gower St., Los Angeles
Loews, Incorporated	10202 Washington Blvd., Culver City
Paramount Pictures Corporation	5451 Marathon Ave., Los Angeles
Republic Productions, Inc.	4024 Radford, North Hollywood
RKO Radio Pictures, Inc.	780 N. Gower St., Los Angeles
Twentieth Century-Fox Film Corp.	10201 W. Pico Blvd., Beverly Hills
Universal Pictures Company, Inc.	Universal City
Warner Bros. Pictures, Inc.	4000 W. Olive, Burbank

and the Collective Bargaining Representative for the foregoing with respect to employment relations:

Association of Motion Picture Producers, Inc.
8480 Beverly Blvd., Los Angeles

NLRB 707
(7-53)

EXHIBIT 3 - NLRB NOTICE OF ELECTIONS - ANNEXED TO AFFIDAVIT OF SIMON ROSE

UNITED STATE
NATIONAL LABOR

NOTICE OF

RIGHTS OF EMPLOYEES

Under Section 7 of the National Labor Relations Act, employees have the right to self-organization; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

PURPOSE OF ELECTION

An election by secret ballot will be conducted, under the supervision of the Regional Director of the National Labor Relations Board, among the eligible voters described herein, to determine the representative, if any, desired by them for the purpose of collective bargaining with their employer.

SECRET BALLOT

The election will be by SECRET ballot. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to the Regional Director or his agent in charge of the election. Your attention is called to Section 12 of the National Labor Relations Act:

ANY PERSON WHO SHALL WILLFULLY RESIST, PREVENT, IMPEDE OR INTERFERE WITH ANY MEMBER OF THE BOARD OR ANY OF ITS AGENTS OR AGENCIES IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS ACT SHALL BE PUNISHED BY A FINE OF NOT MORE THAN $5,000 OR BY

CTION AND MUST NOT BE DEFACED BY ANYONE

DO NOT SIGN THIS BALLOT. Fold and drop in ballot box.

YES	NO
☐	☐

Do you wish to be represented for purposes of collective bargaining by—

COMPOSERS GUILD OF AMERICA

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

If you spoil this ballot return it to the Board Agent for a new one.

OF AMERICA
ELATIONS BOARD

EXHIBIT 3 - NLRB NOTICE OF ELECTIONS - ANNEXED TO AFFIDAVIT OF SIMON ROSE

ELECTION

21-RC-4012

VOTING UNIT

INCLUDED: Composers of music and/or words in connection with music employed in the County of Los Angeles, California, by Allied Artists Productions, Inc., Columbia Pictures Corporation, Loew's Incorporated, Paramount Pictures Corporation, Republic Productions, Inc., RKO Radio Pictures, Inc., Twentieth Century-Fox Film Corporation, Universal Pictures Company, Inc. and Warner Bros. Pictures, Inc., who were in the employ of the Employers during the period April 17, 1955 through July 9, 1955.

EXCLUDED: Arrangers, orchestrators, copyists, proofreaders, librarians, and all other classifications of employees covered by existing collective bargaining agreements with the American Federation of Musicians and all supervisors and independent contractors.

TIME AND PLACE OF ELECTION

Election will be conducted by U. S. Mail. An agent of the Regional Director will mail a ballot to each eligible voter on July 29, 1955. Any person deeming himself eligible to vote who has not received a ballot by August 4, 1955, should immediately contact the Election Section, National Labor Relations Board, RIchmond 9-4711, Ext. 1043. Ballots must be returned to and received at the National Labor Relations Board, 111 West Seventh Street, Los Angeles 14, California, not later than 11:00 a.m., WEDNESDAY, AUGUST 10, 1955, at which time and place they will be opened and counted.

United States of America
National Labor Relations Board

SAMPLE

OFFICIAL SECRET BALLOT

FOR EMPLOYEES OF

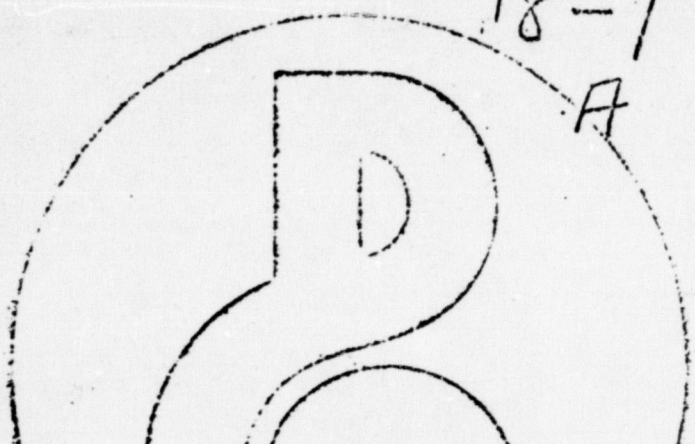
ALLIED ARTISTS PRODUCTIONS, INC., COLUMBIA PICTURES CORPORATION, LOEW'S INCORPORATED, PARAMOUNT PICTURES CORPORATION, REPUBLIC PRODUCTIONS, INC., RKO RADIO PICTURES, INC., TWENTIETH CENTURY-FOX FILM CORPORATION, UNIVERSAL PICTURES COMPANY, INC., and WARNER BROS. PICTURES, INC.

This ballot is to determine the collective bargaining representative, if any, for the unit in which you are employed.

EXHIBIT 4 - CERTIFICATION OF CLGA - ANNEXED TO AFFIDAVIT OF SIMON ROSE

(Same as Exhibit 1 - reproduced herein at page 201a)

EXHIBIT 5 - CLGA BULLETIN - ANNEXED TO
AFFIDAVIT OF SIMON ROSE



18-1
A

What is CLGA?

The Composers and known as CLGA—a fornia law—is a labo to represent compo ment relationships motion picture pro advance the interest of music and lyrics, rights arising from co bargaining on beha obtain better condit concerted action by sary to help ourselv

Who is CLGA?

Included in its Hol membership roster is and composer writin motion pictures.

You will find almost and Grammy awards

Due to the 100% su CLGA today has in f with the Association Producers, Inc., which and independent pro ments with ABC, CB affiliates.

When you work for must become a mem

Membership Be

Motion Picture Indus

These benefits are ov you may be entitled

1. Disability Benefits fo a Partial Pension Ben
2. Spouse's and/or Mine
3. Early Retirement Ben sive, for fully qualifie
4. Additional Pension Be fied for a Normal Pen tional benefit is based was made from Octo

18-A

l Lyricists Guild of America, Inc.—
non-profit corporation under Cali-
r union, duly certified by the NLRB
sers and lyricists in their employ-
with the theatrical and television
ducers; to protect, preserve and
s of its members in the composition
to insure the protection of their
omposition; to engage in collective
lf of composers and lyricists; to
ions of employment; and to effect
the membership whenever neces-
es and the industry.

lywood, New York and European
s virtually every top-ranking lyricist
g today for theatrical and television

every winner of the Oscar, Emmy
in our active membership.

upport of these talented members,
force a Minimum Basic Agreement
of Motion Picture and Television
h represents all of the major studios
oducers of note. CLGA has agree-
S and NBC, their subsidiaries and

these studios and networks, you
ber of CLGA.

nefits of CLGA:

stry Pension Plan

er and above any benefits to which
under the AFM Pension Plan:

r Participants who are eligible for
efit.

or Child's Benefit.

efit between ages 55 and 61, inclu-
d Participants.

nefit to Participants who are quali-
sion Benefit at age 65. Such addi-
on hours for which a contribution
ber 26, 1954 to the date of retire-

ment or to the year end in which such Participant attains age 65, whichever occurs first.

Motion Picture Health & Welfare Fund

This plan is used by both CLGA and AFM. However your CLGA benefits as a composer are in addition to your AFM contributions and add to your overall protection. The CLGA plan also cares for your wife and family in case of illness and provides a $2500 life insurance policy —all without cost to you.

Rights Arising From Composition

Prior to the CLGA Minimum Basic Agreement, the composer and lyricist had practically no protection as to rights and royalties arising from performance. In 1960 CLGA corrected this and the Minimum Basic Agreement reads, in part, "In order to assure the composer of participation in the revenue which may be derived from performances of the compositions, Producer agrees that in the event the composer is, on the date of his employment by Producer, a member or licensor of a Society, Producer will; and it does hereby, transfer and assign the world-wide Performing Rights in and to the compositions to the composer and a publisher of Producer's choice."

This clause, since its adoption, has safeguarded the rights of CLGA composers and authors to collect revenues for the performance of their music in theatrical and television motion pictures throughout the world.

If there were no other benefits, this alone would make CLGA membership invaluable.

Scale for Composition

We have successfully negotiated minimum scales for lyricists and composers of songs for theatrical and television motion pictures. We have successfully negotiated minimum scales for the composing of music in films and television. For these services you may receive more, but never less, than the stated figure.

Bear in mind that CLGA minimums for composing are over and above any AFM minimums you may receive for orchestrating and conducting.

SAG	is for actors and singers in pictures
AFTRA	is for television and radio artists
AFM	is for performing musicians, orchestrators and conductors
CLGA	is for Composers and Lyricists

GUILD of

COMPOSERS and LYRICISTS

AMERICA

JDV
GDS V.
AF

March 21, 1963

EXHIBIT 6 - LETTER DATED MARCH 21, 1963 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

Mr. Ed Colyer
20th Century-Fox Film Corporation
Beverly Hills, California

Dear Mr. Colyer:

Several questions have been raised recently concerning the obtaining of music, particularly songs, under a purchase or licensing agreement. These situations involve music created for a specific theatrical or television motion picture.

It has been argued that such agreements are not within the scope of the Producer-CLGA Minimum Basic Agreement. In order to avoid unnecessary confusion in the future, we feel it would be helpful to issue a clarification of coverage under the Minimum Basic Agreement in this area.

It is undisputed that music already in existence at the time of approaching a composer for employment and created for a purpose unrelated to the motion picture in question is not governed by the Guild Agreement. Where, however, a composer or lyricist creates music as a result of solicitation by a Producer, and where it is anticipated that the music will be used in connection with a specific motion picture, whether so used or not, such composer or lyricist is an employee of the Producer and the terms of his employment are within the purview of the Guild Agreement. The form of his contract, which may establish certain other legal relationships, e. g., ownership and/or rights, is irrelevant and does not alter the underlying relationship involving the personal services rendered.

Some contention has been made that the engagement of a composer and/or lyricist by a publishing company which is a subsidiary of the Producer, is not employment by the Producer. This position clearly is without logical or legal support.

We would very much appreciate your assistance in acquainting representatives of your company who handle these matters with the proper construction of the Guild Agreement.

Sincerely,

Georgia Hanni

Georgia Hanni
Executive Director

GH:mr

8782 Sunset Blvd. / Los Angeles 69, Calif. / OLympia 2-8830 / 292 Madison Ave., Suite 1204 / New York 17, N.Y. / MUrray Hill 3-0966

EXHIBIT 7 - CLGA MEMORANDUM - ANNEXED TO
AFFIDAVIT OF SIMON ROSE

To all Western (ept Bregman, Rone & Rosenberg;
to all Eastern ept 29 expelled and dropped
UILD of por E-73-4, plus ballots & rec. env. to 233
Western, 40 Eastern. 39-21
OMPOSERS and LYRICISTS
ERICA To 27 Actives and Executives in
bad standing plus bills to 22.

YOU WILL BE ELIGIBLE TO RECEIVE A BALLOT IF YOU ARE IN GOOD STANDING.

TO: All CLGA Members

FROM: The Executive Board July 22, 1963

I. BALLOT TO AMEND THE CONSTITUTION . . .

CLGA, now in full swing in representing its members, requires a more solid legal structure for the conducting of Guild business. Under the advice of Counsel, the Executive Board has adopted a resolution recommending that the Guild, both East and West, be incorporated under the laws of California, as a non-profit corporation. This will protect Guild members from individual liability for debts which may be incurred by the organization.

Such action will not alter the operations of the Guild; it is merely a protective measure for the benefit of individual members.

The Executive Board therefore urges eligible members to vote, and to vote affirmatively, for the Constitutional amendment. The amendment cannot be carried without a vote of at least 50% of all Active and Executive members in good standing, two-thirds of them affirmatively. This recommendation is being sent to all CLGA members so that the entire membership may be informed; however, the mail ballot is enclosed for only Active and Executive members in good standing.

Please mark your ballots and mail them in the self-addressed envelope provided. Your name on the envelope is only for checking off against the eligible-member list as having voted; the privacy of your ballots will be respected. BALLOT ENVELOPES MUST BE POSTMARKED NOT LATER THAN AUGUST 12, 1963.

II. INDEPENDENT CONTRACTORS AND PACKAGERS . . .

A device by some independent theatrical film producers to undermine your CLGA collective bargaining agreement is endangering the Guild. Members are therefore urged, in dealing with independents, to ask for straight-out employee contracts. This sets up the employer-employee relationship - the only one by which CLGA members can get the benefits and protection of their Agreement with producers.

When composers enter into agreements with producers as either 1) Independent Contractors, or 2) Packagers, they should be aware that both situations are plainly and perilously outside the CLGA protective Agreement with producers and that such arrangements have also been used by some producers as a device to undercut, or avoid in their entirety, CLGA minimums. Any member involved in either situation must be certain the terms of his contract meet the minimum standards of the CLGA agreement with producers regarding performing rights, fees and screen credit.

Further, the member-packager must sign a CLGA Minimum Basic Agreement with the Guild. He can, however, avoid this requirement, and better protect himself, by insisting on an employee contract for his composing services, and make provision, under a separate agreement, for the hiring of musicians, etc. When approached for a "package" deal, members should notify the Guild office.

We have come a long way and have made many gains. The Guild must now depend on its members to prevent any setback that could result from these situations.

THE EXECUTIVE BOARD

By. Georgia Hanni, Executive Director

8782 Sunset Blvd. / Los Angeles 69, Calif. / OLympia 2-8830 / 292 Madison Ave., Suite 1204 / New York 17, N.Y. / MUrray Hill 3-0966

EXHIBIT 8 - CLGA REPORT DATED DECEMBER 24, 1963 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

CLGA's Report

Published by Composers and Lyricists Guild of America, Inc.
8762 Sunset Blvd., Los Angeles 69, Calif., OL 2-6830
29? Madison Ave., Suite 1204, New York 17, N. Y. MU 3-0966

Vol. X, page 9 December 24, 1963

from Executive Director Edward Grossman . . .

I am pleased to report to the membership that as a result of the distribution last month of CLGA's Code of Working Rules (as adopted by Eastern members last May and in Los Angeles on November 11th) there has been a sharp increase in the requests made to this office by non-signatory producers for copies of our Minimum Basic Agreement, and producers who are signatories have been made more aware of Guild protection of members' interests. This marks a strong use by the membership of the Rules, Rule #6 in particular. Our whole membership should take pride in those composers whose efforts have served notice that the Guild is a moving force.

INDUSTRY COGNIZANT of WORKING RULES OBSERVANCE

It must be pointed out, however, that even when a producer has signed the Guild's Minimum Basic Agreement, this does not automatically assure the composer or lyricist of Guild minimums, credits, performing right reservation, Pension Plan participation and other benefits -- UNLESS the composer has negotiated an employer-employee contract, NOT the independent contractor form.

At a time when your performing rights royalties are under attack in the Courts; at a time when some composing fees are not much higher than those earned by skilled mechanics, a strong Guild is an absolute necessity. It will grow strong to the extent that its members recognize that necessity.

1964 NEGOTIATIONS

Our plans and expectations for 1964 include: industry-wide jurisdiction, nationally, for composing for all theatrical and television films; succesful negotiation of a revised performing rights clause designed to meet current conditions; April 1st commencement of negotiations with the Association of Motion Picture Producers for a new contract, the proposals for which will be prepared by a committee under the chairmanship of Gerald Fried. Thereafter CLGA can concentrate, on both coasts, on stabilizing and improving the musical commercials field.

inside CLGA . . . . . .

ANNUAL MEETINGS

David RAKSIN presided at the Western membership's meeting at the Beverly Hilton Hotel (11/11) and Winston SHARPLES at the Eastern meeting at Counsel Leonard Zissu's offices (11/26). In addition to the section-by-section discussion and approval of the Code of Working Rules by the Coast membership, the following 1962-63 reports were presented to both meetings:

Membership data: 376 -- 309 Western, 67 Eastern

Financial Report as prepared by Frug, Hoar, Schultz & Co. (condensation enclosed for members' information)

Tellers Committee (John CARISI, Cyril MOCKRIDGE, Ronald STEIN) report of election to Board's Western Section for 3-year terms: Basil ADLAM, Jeff ALEXANDER, Benny CARTER, Hugo FRIEDHOFER, Franklyn MARKS, Harold SPINA, Leith STEVENS and Johnny WILLIAMS; and of re-election to Board's Eastern Section for 3-year terms: Winston SHARPLES, Elie SIEGMEISTER, Cornel TANASSY and David TERRY.

(Continued)

EXHIBIT 9 - LETTER DATED FEBRUARY 4, 1964
WITH ATTACHMENT - ANNEXED TO
AFFIDAVIT OF SIMON ROSE

GUILD of
COMPOSERS and LYRICISTS
AMERICA INC.

February 4, 1964

Mr. Edmund L. Burke
20th Century-Fox Film Corporation
10201 West Pico Boulevard
Los Angeles 35, California

Dear Mr. Burke:

This is to notify you that the composers set forth on the enclosed list have been employed by at least one of the members of the Association of Motion Picture Producers, Inc. since the effective date of the collective bargaining agreement between us.

Such employment of each of the composers was more than thirty days prior to the date of this letter; accordingly, any present or future employment by your company of any of the composers named must be subject to such composer's becoming and remaining a member in good standing of the Composers and Lyricists Guild of America in accordance with the terms of Article 5 (a) of the Producer-CLGA Minimum Basic Agreement of 1960.

Sincerely,

Blon Clay
Assistant Executive Director

CC:mr
Enclosure

211a

EXHIBIT 9 - LETTER DATED FEBRUARY 4, 1964
WITH ATTACHMENT - ANNEXED TO
AFFIDAVIT OF SIMON ROSE

Charles Albertine

Paul Anka

Louis Y. Brown

Robert Brunner

Betty Comden

Bobby Darin

Jack Dashiend

[redacted]

Terry Gilkyson

Albert Glasser

Adolph Green

Harry Harris

Joe Lubin

Lillian Mattis

Bob Merrill

Sydney Shaw

Jule Styne

February 4, 1964.

EXHIBIT 9 - LETTER DATED MARCH 17, 1965 -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

GUILD of
COMPOSERS and LYRICISTS AMERICA, inc

March 17, 1965

Mr. Lionel Newman
Music Department
20th CENTURY-FOX FILM CORP.
Beverly Hills, California

Dear Mr. Newman:

This is to notify you that the composers listed below have been employed by at least one of the members of the Association of Motion Picture and Television Producers, Inc. since the effective date of the collective bargaining agreement between us:

Burt Bacharach	Ric Marlowe
Hal Belfer	Jack W. Marshall
Hal David	Irving Taylor
Meyer Dolinsky	Richard Wess
Michael Hennagin	Forrest Wood

Such first employment of each of these composers has been completed; or was begun more than thirty days prior to the date of this letter. Accordingly, before any further employment by you of one of the composers named above, such composer must become a member in good standing of the Composers and Lyricists Guild of America, in accordance with the terms of Article 5(a) of the Producer-CLGA Minimum Basic Agreement of 1960.

Very truly yours,

EDWARD GROSSMAN
Executive Director

EG:z

cc: Mr. Edmund L. Burke
Mr. Frank Ferguson

EXHIBIT 9 - LETTER DATED AUGUST 4, 1965 WITH ATTACHMENT - ANNEXED TO AFFIDAVIT OF SIMON ROSE

VM
VCS CB
JG
AGV
MK

GUILD of COMPOSERS and LYRICISTS AMERICA, inc.

August 4, 1965

JI

Mr. Frank Ferguson
Legal Department
20th CENTURY-FOX FILM CORPORATION
Box 900
Beverly Hills, California

Dear Mr. Ferguson:

This is to notify you that the CLGA members set forth on the enclosed list have been suspended from membership in the Guild for non payment of Guild dues.

In accordance with the terms of Article 5 of Producer-CLGA Minimum Basic Agreement of 1965, any future employment by your company of any of the composers named must be subject to such composer reinstating himself as a member in good standing of the Composers and Lyricists Guild of America.

Should any of these suspended members again become members in good standing we will promptly notify you.

Very truly yours,

Kenneth Thomson

Kenneth Thomson
Executive Director

KT:z

Copy to Edmund L. Burke, Industrial Relations
Lionel Newman, Music Department (TV)
Urban Thielman, Music Department

EXHIBIT 9 - LETTER DATED AUGUST 4, 1965
WITH ATTACHMENT - ANNEXED TO
AFFIDAVIT OF SIMON ROSE

GUILD of

COMPOSERS and LYRICISTS

AMERICA, inc.

THE FOLLOWING CLGA MEMBERS ARE SUSPENDED FROM THE GUILD AS OF 8/1/65:

Alexander, Alex
Almeida, Laurindo
Bolin, Nick
Brooks, Jack
Carisi, John
Carlton, Maurice
Coppola, Carmine
del Castillo, L. G.
Elliott, Forrest
Elliot, Jack (John M.)
Hayman, Richard
Jerome, Jerry
Kelmenson, David
Lorin, Will
Mac Donald, James Lee
Mooney Harold
Myers, Farlan
Neel, John
Porter, Del
Raskin, Milton
Schoen, Victor
Stegmeyer, William
Steininger, Franz
Starr, June
Styne, Stanley
Walton, Kip
Weinstein, Milton
Young, Marl

CLGA
8/4/65

EXHIBIT 9 - LETTER DATED SEPTEMBER 8, 1965 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

GUILD of

COMPOSERS and LYRICISTS

AMERICA, Inc.

September 8, 1965

Mr. Frank Ferguson
Legal Department
20th CENTURY-FOX FILM CORPORATION
Box 900
Beverly Hills, California

Re: RICHARD HAYMAN

Gentlemen:

This is to notify you that the CLGA member, mentioned above has become a member in good standing of this Guild since our letter to you of August 4, 1965.

This composer is now fully eligible for further employment, and we request that his name be expunged from the list of suspended Guild members sent to you August 4, 1965.

Very truly yours,

Kenneth Thomson

Kenneth Thomson
Executive Director

KT:z

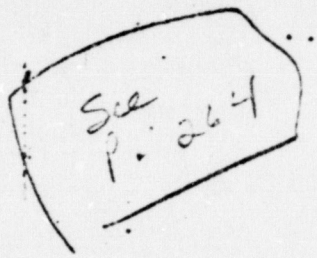
Copy to Edmund L. Burke, Industrial Relations
Lionel Newman, Music Department
Urban Thielman, Music Department

EXHIBIT 10 - STATEMENT OF LEONARD ZISSU TO HOUSE OF REPRESENTATIVES COMMITTEE ON JUDICIARY - ANNEXED TO AFFIDAVIT OF SIMON ROSE

(Reproduced herein at pages 218a through 234a)

See Page 264 for Mr. Jessup's statement

From: Hearings before Subcommittee No. 3 of the Committee on the Judiciary, House of Representatives, 89th Cong., 1st Sess. on Bills for the General Revision of the Copyright Law, Part 1, at pages 260-276 (May 28, 1965)



STATEMENT OF ROBERT EMMETT DOLAN, ON BEHALF OF THE COMPOSERS & LYRICISTS GUILD OF AMERICA, INC.

I am grateful for the opportunity to appear here as the representative of the Composers & Lyricists Guild of America. This organization comprises some 400 writer and composer members who contribute most of the music presented in television and film productions today. It numbers among its members some of the country's most outstanding writers and composers—including many of the celebrated names already mentioned in these hearings—and was formed over 10 years ago with the express purpose of raising the writer and composer's employment terms and conditions to a level commensurate with today's living problems. Most of the music that you hear today in motion pictures and in television films has been written by members of our organization who are also, incidentally, members of some of the other organizations that you heard from yesterday. I, for example, happen to be a member of ASCAP.

With respect to the proposed copyright law revisions, the guild is happy to record general approval of the main provisions, such as the lengthened copyright term, the increase in statutory mechanical royalties, the elimination of the jukebox exemption, the reversion principle and the more liberalized copyright notice provisions. The guild, which represents composers and lyric writers in the areas of theatrical and television films, is opposed to the employment-for-hire provisions. I beg the committee's indulgence while I sketch in the background vitally necessary to make the composer's position clear.

In our society today, to support one's self—let alone a family—on the income available to the young composer, is as formidable a challenge as was survival when man first emerged from the sea—if that's where he came from. Any young man who chooses this way of life takes on a burden that would have cowed Atlas. The young American composer may, for all we know, be the bravest citizen we have.

When a lawyer, doctor, or engineer is legally certified as such, he may then start practicing his profession. When the young composer receives his conservatory or university degree, he is congratulated by his friends and immediately asked how he plans to earn a living. It's a good question, for no one assumes that he can do so by writing music. If, however, he is still determined, he must first go off somewhere all by himself and write his music, and while he is doing that, no one pays him a nickel.

At this stage, foundation grants are not available to him because, though his degree says he is a composer, no one really believes he is until he writes something. How, then, does he live? Normally, he writes music part time while he works at a job calling for unskilled labor. This helps pay monthly bills. Of course, if he has the ability, he might try teaching but teaching, far from being a moonlighting occupation, is a full-time job. Few people realize that composing music is a full-time job, too, and not something that can be relegated to evenings and weekends. Yet that is that only time our young composer has left to write his music—evenings and weekends.

Meanwhile, friends and relatives are commiserating with his parents, saying: "After all the money you spent giving him a fine

education, you'd think he'd find something more permanent to do than raking leaves." Some think he should even see a doctor.

There is hardly a young composer who hasn't heard this over and over again. If the usual fates befall him so that he falls in love during this period and wants to marry, then they do send for the doctor, for this is sheer catastrophe, and if he does marry, he might as well forget music. We have lost a good many composers that way. Of course, I myself was married at such a stage in my life, but that was during the depression and everybody was in trouble then.

If the young composer, however, sticks it out and writes his music, he faces a new problem, for his music must go through three stages before it is complete: it must be written—played—and heard. With the writing done, he must now find someone to play it, and this could consume the best years of his life. But, let us assume that it does get played and heard and, for the sake of argument, that it is well received. How does all this affect his financial position? Well, the chances are that he is now in debt. He probably paid to have the orchestra parts of his music copied, and he surely had to buy tickets for all those relatives who thought he should have been committed. He also had to rent a dinner jacket, so that he might take a bow after the performance.

In this regard, Henry Cowell, the eminent American composer, told me that at a premiere performance of a symphony of his, the conductor, at the conclusion of the piece, motioned to him to take a bow—which he did. After he sat down, a strange lady asked him why he had stood up and bowed. He explained that he was the composer of the symphony she had just heard. She was astonished, and said, "Why, I thought all composers were dead." Well, most of them are. The so-called live composers are prematurely gray—as I am—trying to figure out how to make ends meet.

In a recent issue of the New York Herald Tribune the music critic wrote—and I quote:

> From a financial standpoint, a composer's life is not a happy one. The number of composers earning a satisfactory living from serious composition is incredibly small * * *. It's expensive to be a composer. It isn't until a composition really begins to make the rounds that a composer can hope to get back some of his investment. Small wonder, then, that the phenomenon of the full-time composer has all but disappeared from the land.

And, should anyone think that this is not representative of today's conditions, let me point out that these words were published just 3 weeks ago.

Time Magazine published a story a while ago about a young American composer-pianist who had written a piano concerto. When it was given its first performance by a leading symphony orchestra, he played the solo piano part. As a performer, he was paid $750 for playing the piece, but as a composer, his royalty came to $40.

Let us say, however, that the young composer I referred to earlier was financially more fortunate and that, after his one-night triumph with his relatives and friends, he was asked to write the score for a film. Because he is a fledgling composer he will be paid no more than a modest fee.

He accepts that situation, believing that if his music is successful in areas other than the film for which it was written, he will receive

additional income. But, when he reads his contract, he finds that he is an employee for hire, and when he consults a lawyer to find out what that means, he learns that after he has written the music the employer will become the author and composer thereof and will also be the copyright owner. Writing or composing has rightly been called the loneliest profession in the world because it must be done by the creative artist alone, and there are no facilities or laboratories that the employer can place at the composer's disposal that will help him write the music. He must do it all by himself. Whereas the composer, however, actually writes the music, the law says that he didn't—that his employer did. If the employer feels no pangs of conscience in such a situation, the composer does, because by his very acquiescence—his submission—his silence—he is aiding and abetting the foisting of a fallacy. Furthermore, he comes to realize that though the employer plans to share some of the music's income with him, the activity of that music—beyond its use to publicize the film—is minimal. The film producer, who is now the legal owner of the music and guides its destiny, has no particular enthusiasm in exploiting the music for whatever additional values it might have. The producer is in the film business, and the composer's music is an adjunct to that business—no more, no less.

A case in point is that of the composer, David Raksin, who is also president of the Composers & Lyricists Guild of America. By the way, he is in Europe and he regrets he could not be here at this time. He wrote an excellent score for a dramatic film and, after the film was released, hundreds of letters poured in asking where copies of one of the melodies in the score could be obtained. Gratified by this public reaction, he took the melody to Johnny Mercer, the well-known songwriter, so that a lyric might be written. The result of this collaboration was the song, "Laura," one of the most beautiful and successful songs ever written. But it was public demand alone, not exploitation activity, that led to its publication. To force the composer to rely upon pressure from the public to reveal the beauty of a melody in a dramatic score is to provide him with a frail basis indeed for a livelihood.

It seems significant to me that the employment-for-hire situation is almost exclusively a facet of the film industry, whether theatrical or television films. I say this as a composer. I am speaking of fields in which composers work. Book publishers, legitimate stage show producers, magazine editors, and others, are satisfied as a rule to acquire only those rights necessary to carry on their business. But the film industry insists on acquiring all rights, including rights for which they have no earthly use and which they may, in fact, never use.

This situation usually prevails when a writer or composer makes his first deal for an artistic work with a film producer. If his film deal is not his first transaction for the work in question, the film producer, being powerless to acquire rights already committed to others, is content to obtain only those rights he needs for the film production. It is noteworthy that many such restricted deals have been made. As an example, I could cite Irving Berlin's musical film "White Christmas." Here I am in a position to give at least one producer's viewpoint, since I was the producer of that film. Without acquiring all rights, without becoming the author, composer, and copyright

owner thereof, but simply by securing those rights necessary to produce and release the film, "White Christmas" proved to be the highest grossing musical film in the company's history, and one of the entire industry's highest grossing musical films of all time. Giving up employment-for-hire provisions was no sacrifice at all, nor did it cause, to my knowledge, any legal problems anywhere in the world.

This clearly demonstrates that the film industry does not truly need all rights, nor does it need to become author, composer, and copyright owner in order to function in business. Under present employment-for-hire provisions, the employer acquires not only the rights he needs to stay in business, but all other rights, including unforeseen rights at the time of contract signing. Since the composer's creative years are normally limited, this has the effect of denying him a stake in his own future. It is precisely these unforeseen rights, as possibly the committee has already sensed in these hearings, that should be safeguarded now. That is why I believe that the employment-for-hire concept is an outmoded habit, an unrealistic tradition, totally unnecessary to the producer and grossly unjust to the composer.

Though I am also currently active in the field of education, I join my composer-colleagues in strong opposition to the extension of the proposed exemptions in the bill for any organization, nonprofit, educational or otherwise, to perform or reproduce copyrighted works without the payment of royalties. It has been argued that, when an artist produces something of lasting value, he has an obligation to make it available to such institutions free of charge, so that its cultural benefits can be passed on. This places a penalty on accomplishment. If you turn out junk, you may collect all the traffic will allow, but if you create something worthwhile, you must give it away. This is all the composer needs now: to be charged—over and above his normal obligations—with the responsibility of underwriting part of the Nation's education costs, and also to be robbed of any incentive to aspire to artistic achievement. The unanswered question in all such proposals is, what do they expect the composer to live on? I know of no supermarket, department store, or landlord who would be willing to supply food, clothing, or shelter without charge to a composer, simply because he is contributing to the Nation's culture. We have to pay our bills like anyone else in this country—with coin of the realm.

It would seem that the very least the composer is entitled to is legal recognition that he does, in truth, write the music he writes. Also, he should be allowed to seek whatever income that music can bring him, from whatever avenues are available, so long as they do not create direct competition for the employer. Most of our laws evidence a healthy respect for the investment of a dollar. Why not give similar protection to the investment of a man's brain which is, after all, his most unique possession?

Again, let me say that I am honored to have been given the privilege to address this distinguished committee and that my gratitude is wholeheartedly shared by the Composers & Lyricists Guild of America.

Mr. KASTENMEIER. Thank you, Mr. Dolan.

Mr. Zissu, did you want to give your statement now or did you want to summarize it?

STATEMENT OF LEONARD ZISSU, ON BEHALF OF THE COMPOSERS & LYRICISTS GUILD OF AMERICA

Mr. ZISSU. I will try to be reasonably brief. Since this is the first time during these hearings that the "employment for hire" question is being touched on I may ask the indulgence of the committee to expand my remarks, having in mind Mr. Poff's suggestion about the emulation of my distinguished predecessor in front of me, Mrs. Pilpel.

Mr. KASTENMEIER. Are you going to elaborate on the reference to employment for hire by relating it specifically to language in the bill?

Mr. ZISSU. Yes; we have a proposed new section. My memorandum, which I will follow, develops the legal aspects.

Mr. KASTENMEIER. Proceed, sir.

Mr. ZISSU. I, of course, share the admiration and the gratitude, as expressed by others here, with reference to the monumental, the herculean, effort of the Register of Copyrights. Our admiration is unbounded for what we think is a job, an enormous accomplishment, well done.

The Composers & Lyricists Guild of America, Inc., submits to the subcommittee that the intended primary beneficiary of the copyright under the Constitution—the true author of the work—would be subjected to needless and unfair discrimination by the "works made for hire" provisions of H.R. 4347 and offers the following objections and suggestions concerning those provisions (secs. 201(b), 101, 203(a), 302 (b) and (c), 304(c), and 408(4)).

The Composers & Lyricists Guild of America, Inc. (CLGA) is a labor union or guild representing approximately 400 composers and lyricists creating music for the motion picture and television industries in the United States. The guild is currently engaged in negotiations with the Association of Motion Picture & Television Producers for an extension of a 1961 collective bargaining agreement. The association is an organization representing the major producers, other than networks, in both the television and motion picture industries.

Because most of the music composed for the motion picture and television industries is prepared at the direction of the producers, the works-made-for-hire provisions of the bill are of vital concern to the guild membership. As the bill is presently drawn, the employer for hire—as well as a party who specially orders or commissions a work for motion picture and certain other uses under a writing which says that the work shall be considered as one made for hire, as if it were an ordinary employment-for-hire relationship—that party is considered and treated as the author of the work and owns all rights under copyright excepting what the author has been able to expressly reserve.

Moreover, there is no termination right through which rights could ever revert to the actual author during the fixed copyright term of years specially applicable to such works, which for works for hire is somewhat different than other works where you have the life plus 50. In the case of works for hire you have 75 years from publication or a hundred years from creation whichever expires first.

Revision of the Copyright Act of 1909 affords an opportunity to dispose of the anomalous doctrine under which the employer has been deemed the author of the work created. It is the position of the guild that the employer for whom a work is composed can by no fair or

logical or ethical standard be considered an "author." To perpetuate or extend this inequitable fiction in the new statute would immure the composer and lyricist in his present professionally and financially disadvantageous position while affording the employer far more "protection" than is reasonably necessary. The guild respectfully requests consideration of the following provision to replace 201(b) and its related for-hire provisions, which, it is submitted, will realistically determine the relationship of the employer and the creator, adequately protecting the former and recognizing the contribution of the latter:

(b) *Works resulting from employment or special order or commission.* In the case of a work prepared by an employee within the scope of his employment or a work specially ordered or commissioned, the employer or other person for whom the work was prepared, unless the parties have expressly agreed otherwise, shall have in respect of the work resulting from employment, only the right to use the work in the regular business of the employer and in respect of the ordered or commissioned work only the right to use the work for the specific purpose for which it was prepared, but in either case the employee or other person preparing such work may not make or authorize any competitive use, provided, however, that where such work is a supplementary work or is a derivative work based upon a pre-existing copyrighted work of the employer or other person for whom the work was prepared, the latter, unless the parties have expressly agreed otherwise, shall be deemed the owners of all rights therein and the provisions of sections 203 and 304(c) shall not apply.

Those are the termination privilege sections.

Now, in essence this says where the employer does not spell it out at all he can't get less than the equivalent of the patent shop right as a matter of law. If he spells it out specifically he can get whatever rights beneficially the parties specifically contract for. He won't get more than the shop right or that which he specifically wrote into the contract against the author employee. The author employee, like in the patent situation, cannot authorize or make competing uses.

We go further. Where the material involved is the supplementary authorship material, preface, illustrations and the like, the employer gets all rights without limitation in perpetuity. There is no problem of a termination provision as exists in the works of authorship. The same situation, the same unlimited, unqualified, perpetual right of ownership of material, exists in the case where the employee writes a work that is based upon a pre-existing copyrighted work owned by the employer. We feel in those two categories the employee's contribution is relatively slight as against the genuine authorship situation—a new and original and independent work—so that the employer can get all these additional benefits and rights. We think this will meet the publishing situation and will give us protection in the producer situation.

Mr. KASTENMEIER. Permit me to interrupt at this point. In this description, how would you place the relationship of a byline reporter with a newspaper? He writes a column—of course, his byline appears—in a sense he is writing for hire.

Mr. ZISSU. I think in a case like that if there were no written relationship whatsoever between the parties, and this would be most unusual if there were none, under your shop right doctrine the newspaper would get the full body of rights useful and necessary in the business.

Under this proposal the work created by an employee in the course of his employment or a work specifically ordered or commissioned would be treated in a manner somewhat similar to that under the "shop

right" doctrine as it has developed decisionally in the patent law, where the employee-inventor is the initial owner of the statutory right. The employer would acquire in any event the right to use the work as needed for the purpose of his regular business or for the purpose for which it was commissioned, with the creator retaining the remainder of the bundle of rights provided for in the statute, although he would not be permitted to authorize competing uses. Such treatment would be a fair consensual implication from the relationship. There is no particular warrant for the employer of an author to receive an even more favorable legal position than the employer of an inventor, since in the patent field the employer not only provides the employee with compensation but with the laboratory and other facilities as well. The parties could, of course, provide otherwise in their contract, as they can under the present statute or could under the presently proposed 201(b). The statutory artifice becomes totally unnecessary because the employer can fully protect himself by obtaining an assignment from the creator-employee. The difference in result is that the bargaining burden, i.e., the necessity to alter the natural relationship, would be upon the employer, the party who normally is favored with the otherwise superior bargaining position and has more ready access to legal advice.

The relatively inferior position of the author has been recognized by Congress in the past. The renewal provisions of the 1909 act manifest congressional concern over the improvident business dealings of authors—a concern reflected as to "non-hire" works in the reversion sections of the Register's bill but ignored in the area where protective features are most needed, namely, in situations where the author is an employee or obliged to recognize a hiring relationship.

Such authors "for hire," even when banded together in guilds, must still look to a progressive copyright statute for their rights protection. Their guilds are not in the ordinary case—and I am speaking for CLGA, too—likely to possess sufficient economic strength to fashion a satisfactory collective bargaining agreement with the employers on matters of copyright. They are unlike other union employees whose stoppage of services can bring an employer's business to a swift halt. The employee authors can only hope doubtfully that the employer—normally well stocked in a backlog of recorded and other materials of authorship—will ultimately respond as he gradually feels the effect of a cutoff in the flow of freshly created material.

This is particularly so in music. There is enough recorded music lying on the shelves to permit producers to function in these situations almost indefinitely. That the public might get a lesser quality of music, less fresh, is something about which the public would only begin to complain a long time later.

An exception is made in the provision suggested herewith for supplementary authorship material and derivative works based upon works copyrighted by the employer. Thus, unless the contract provides otherwise, the entire copyright in the new and closely related works would belong by statute to the employer, in effect, as an assignee. In addition, sections 203 and 304(c) providing for termination would not be applicable to such works. This exception too, we submit, is a fair consensual implication from the relationship of the parties as to this particular material.

Since a work can be used and exploited in numerous ways in addition to that for which it was created, frequently including uses unforeseeable at the time of creation, it would seem equitable that the actual author be assured of sharing in the benefits of such further utilization. The creator, by his very nature, has a continuing incentive for the exploitation of his work. He would not be content to have it lie dormant, on the shelf, so to speak. I cite you an illustration which is referred to in the memorandum of a serious composer, Gail Kubik, who has been identified with this association, and his Pulitzer Prize work, "Symphony Concertante." In 1949 he wrote virtually the identical work from a musical standpoint as the score of a motion picture film called "The C Man".

Within a year the producer of that film was inactive and within 2 years or so dissolved. It was a corporate producer. Kubik fortunately, having counsel, and he had been versed in having counsel, was able to reserve publication rights in that score, something entirely exceptional. As a result of having these rights, having the incentive, he went to work, saw the necessary people, made arrangements for the performance at great expense and cost, and the Pulitzer Prize award emerged, the first time incidentally that the musical award has been given by Pulitzer after a lapse of some years. This would not have occurred but for the fact that the composer had the incentive. The scales were not in that instance, as a result of legal counsel, so tipped unfavorably against the composer that he was unable to acquire the work.

The author-for-hire should not be beset with obstacles in retaining rights not needed or reserved by an employer, and he too should have the right of termination after 35 years. Otherwise when the employer is no longer interested or active or has gone out of business, valuable works will realistically be lost to the author and the public.

As the law now stands and as H.R. 4347 proposes, it is the employer who, although bargaining and calculating his compensation to the author on the basis of his specific and immediate need for the service, is nevertheless the one-sided beneficiary of the unforeseen business opportunity provided by supplementary or novel exploitation. There seems no justification for this rule other than that attempted in the argument that the author has been paid for the work he did and is entitled to nothing more.

Yet, it is equally true that the employer has received all he bargained for when he receives, for example, the song or the music he requested for the project at hand. Clearly the equitable balance here favors the author, especially when it is considered that the basic constitutional purpose of the copyright law is the advancement of art through protection of its creator.

The Congress shall have Power • • • To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries (U.S. Constitution, art. I, section 8).

There does indeed exist a genuine question as to the constitutionality of a statutory provision which specifically provides that parties other than the creator be considered for purposes of copyright as the "author" of a work of art, thus granting such parties the exclusive right

which the Constitution empowers Congress to secure to authors. Such constitutional doubt should not be minimized here since the authorship status for the purpose of rights ownership would be conferred upon one not the true author, to the exclusion and detriment of the true author. There can be little doubt that the word "author" historically has meant the true or actual author in the ordinary sense of the word. This is in fact the view of the cases nearest in time to the adoption of the Constitution. They reject a concept of vicarious authorship.

Certainly the framers of the Constitution did not envisage today's giant entertainment corporations as "authors." Thus the Register's proposed bill needlessly and unfairly impairs the composer's constitutional status in its gratuitous maintenance of the employer as author anomaly.

These corporations are getting larger and larger and, for reasons of diversification of business and investment, unrelated companies, utility and real estate companies, as you heard testified yesterday, are now in the music business as publishers. These companies have a great deal of money to spend, to finance through employment relationships and salaries the writing of works for which they will own all the rights, and with respect to which they will be able to deprive the author of the right being set up under what we hope will be an otherwise effective copyright bill.

I will run briefly over my statement here except to point out that in the very present law, even in the 1909 act, the for-hire provision has been shown conclusively in the studies of the Copyright Office, the Ringer studies, to have been a historical misstep in terms of the legislative process. According to the most extensive Ringer studies, the focus of the committees was upon staff-written material for composite or cyclopedic works prepared by a number of salaried employees for purposes of publication by an employer-publisher. Referring to the final committee report concerning renewals:

> In the case of composite or cyclopedic works to which a great many authors contribute for hire • • •. (H.R. Rept. No. 2222, S. Rept. No. 1108, 60th Cong., 2d sess., 13, 1909).—

Miss Ringer states:

> It seems that the committee's major concern in this situation—if not its only concern—was with cases where a number of authors contributed to a single work. It is almost as if the committees were unaware that the provisions concerning • • • works made for hire had been added to the bills they were reporting. (p. 131)
>
> When the drafter of the final Smoot-Currier bill in 1909 prepared the renewal section, he imported intact the language giving a special term to works copyrighted by employers for hire into the provision giving proprietors renewal in their own right. The committee reports on this final bill indicate a likelihood that the legislators regarded a "work made for hire" as a species of "composite or cyclopedic work," and did not realize the breadth of the exception they were creating. (pp. 138-139)

The Ringer studies are by far the most extensive, so far as I know, exhaustive ones that have ever been undertaken with reference to the legislative history of the provision of the act.

Not only, therefore, does the legislative history of the emergence of the for-hire provisions into the 1909 act fail to support the sweeping divestment of rights in all employed authors, as now sought, but the

courts themselves interpreting these provisions have regularly declared that an employment relationship per se is not the sole determinant of rights vesting in the employer, but that the contract intention itself must be sought.

Although the proposed bill on the whole succeeds in its intention of improving upon the present state of copyright law, it does, with respect to its works made for hire provision, effect a retrogression. The bill disregards an important distinction in including within its disqualification of copyright ownership any work by an author-employee "within the scope of his employment" even if the work created were not the specific product required by his employment duties. In this respect the current proposal rejects the uniform court interpretations of the 1909 act which hold, absent express contractual provision otherwise in favor of the employer, that the employee is entitled to copyright unless his created work was the very thing he was required to accomplish under his employment. The bill is restrictive of the 1909 act and the cases under it which generally indicate that the work product must be the very thing that the employee was engaged to accomplish or so related to it as a definite integral part of his duties before the employer's position can attach.

Mr. Pore. A witness indicated in his earlier testimony that it was intended that the word "scope" should be synonymous with the word "course." If this is the legislative intent would this remove your objection?

Mr. Zissu. No; because you have the "scope" and "course" and other words and all of these words, "scope" and "course" and "in connection with employment" have produced ranges of opinion. The spectrum is complete in terms of lawyers' differences here, and no one can definitively say what a court will do with one set of words against another. We know the results in some cases and we know that the "works made for hire" provision, which is the only reference in the 1909 act, is in some fashion broadened when you say "within the scope of employment" as against only "works made for hire."

Should it be deemed necessary that the employer have intial copyright in a work because of its composition for his specific need, it is nevertheless unnecessary and unfair to obtain this result through the broad, single category treatment of section 201(b) in the proposed bill. As previously suggested, it is perfectly feasible to treat the employer as initial owner in certain situations and the author-employee as initial owner in other instances.

Thus if a work has independence and unity and is exploitable apart from the larger work of which it was originally a component, or in other media—such as the film score—the employee should have the ungranted or reserved rights as well as the reversion privilege accorded to non-hire authors, in order that there be no wasteful neglect of opportunities for further exploitation as a consequence of the lack of interest, foresight, capability or legal existence of the employer, particularly a producer. And there are these one-shot companies, one-production companies that are out of business after the show is over or after the particular venture is accomplished.

Mr. Pore. As I understand your entire statement it is generally to the effect that the language in the bill, as it is now written, containing

as it does a clause which permits the author and the employer to write their own contract, would not make it possible to protect the rights of the author in the work. Would you feel that the language, as written, places the bargaining burden upon the author, and the language which you propose as a substitute would be designed essentially to place the bargaining burden upon the employer? Is this a fair summary?

Mr. ZISSU. Not entirely. That is No. 1. The No. 2 point is that the reversion privilege, once it is for a for-hire situation, is forever lost to the employee no matter how independent or integrated or separately functional a work he has created. (That is not a matter of bargaining.)

In conclusion, since as demonstrated above the employer's investment or expense can be safeguarded without recourse to the logic-straining and constitutionally questionable artifice of authorship, it is respectfully submitted that the aforestated provision be inserted in H.R. 4347 in the place of the present section 201(b), and that the other references therein to "works made for hire" be deleted, thus avoiding constitutional problems, equitably recognizing respective, competing interests and reclaiming for the employee who creates a work his rightful status as author of that work, with all the benefits and rights which appropriately flow therefrom.

Mr. KASTENMEIER. Thank you.

I have one question for Mr. Dolan. I am not very familiar with the organizations that are testifying in the sense of what they represent. You indicate you are a member of the American Society of Composers, Authors & Publishers, ASCAP, as well.

Mr. DOLAN. That is a society licensed to collect one right, the performance right.

Mr. KASTENMEIER. What is the Composers and Lyricists Guild?

Mr. DOLAN. It negotiates employment agreements with the television-film and the film industries for composers.

Mr. KASTENMEIER. Are there any other groups to which a young——

Mr. DOLAN. Oh yes; there are many. For instance, I am a member of the Musicians Union in New York and also the Musicians Union of Los Angeles. Not all of these necessarily are guilds. The Academy of Motion Pictures for example, I was on the board of governors there. We have an organization called Screen Composers Association which has nothing to do with bargaining matters at all. It is an organization actually set up to keep the composers informed on the rights situation as it is practiced in different countries throughout the world because we have, you know, composers from different countries of the world that belong to different societies.

Mr. KASTENMEIER. In order that a young successful composer might protect his legal rights it might be necessary or desirable for him to belong to quite a number of organizations.

Mr. DOLAN. It depends on how many functions he wants to get into. If he composes music and orchestrates his own music, he may do that without belonging to any society until he negotiates with a film producer at the time that an agreement is in effect between the film industry and the Composers & Lyricists Guild. If he wants to conduct, then he has to belong to the musicians union. If he wants to or-

chestrate any music other than his own music, he has to belong to the musicians union.

Mr. KASTENMEIER. Mr. Zissu, while your discussion here has been in terms of authors, you talk really about composers and lyricists who are engaged in contracting with movies or television films. Does this work-for-hire question pertain to writers and authors of literary works such as magazine writers and others? Does the same question obtain there?

Mr. ZISSU. I have thought about that. Our memorandum, as you have noted, is broadly drawn. We talk about authors and employed authors. We draw in the category by definition those special situations which have the same consequences as the for-hire consequences by definition in the bill. We see no distinction there. I suppose if a group thought there were distinguishing features warranting different treatment they would come forward with it. We know that the Writers Guild is associating themselves with our position and their witnesses will follow. And they represent thousands of people who write stories for magazines, I think, magazine writers who write for films and for radio and the like. I don't assume that even the magazine situation would want the for-hire consequences for their people to be any different than what we want for our people. We know the situation for composing, as I say.

Mr. KASTENMEIER. Thank you.

Mr. Edwards?

Mr. Poff?

Mr. POFF. I believe I have no further questions. I want to say this testimony has been helpful to me.

Mr. DOLAN. Thank you, sir.

(Mr. Zissu's prepared statement and a supplemental memorandum submitted by him subsequently are as follows:)

COMMENTS OF THE COMPOSERS & LYRICISTS GUILD OF AMERICA, INC., ON THE "WORKS MADE FOR HIRE" PROVISIONS OF H.R. 4347

The Composers & Lyricists Guild of America, Inc., submits to the subcommittee that the intended primary beneficiary of the copyright under the Constitution—the true author of the work—would be subjected to needless and unfair discrimination by the "works made for hire" provisions of H.R. 4347 and offers the following objections and suggestions concerning those provisions (secs. 201 (b), 101, 203(a), 302 (b) (c), 304(c) and 408 (4)).

The Composers & Lyricists Guild of America, Inc. (CLGA) is a labor union or guild representing approximately 460 composers and lyricists creating music for the motion picture and television industries in the United States. The guild is currently engaged in negotiations with the Association of Motion Picture & Television Producers for an extension of a 1961 collective bargaining agreement. The association is an organization representing the major producers, other than networks, in both the television and motion picture industries.

Because most of the music composed for the motion picture and television industries is prepared at the direction of the producers, the works made for hire provisions of the bill are of vital concern to the guild membership. As the bill is presently drawn, the employer for hire as well as a party who specially orders or commissions a work for motion picture and certain other uses under a writing which says that the work shall be considered as one made for hire, is considered and treated as the author of the work and owns all rights under copyright excepting what the author has been able to expressly reserve. Moreover, there is no termination right through which rights could ever revert to the actual author during the fixed copyright term of years specially applicable to such works.

Revision of the Copyright Act of 1909 affords an opportunity to dispose of the anomalous doctrine under which the employer has been deemed the author of the work created. It is the position of the guild that the employer[1] for whom a work is composed can by no fair or logical standard be considered an "author." To perpetuate or extend this inequitable fiction in the new statute would immure the composer and lyricist in his present professionally and financially disadvantageous position while affording the employer far more "protection" than is reasonably necessary. The guild respectfully requests consideration of the following provision to replace 201(b) and its related provisions, which, it is submitted, will realistically determine the relationship of the employer and the creator, adequately protecting the former and recognizing the contribution of the latter:

"(b) WORKS RESULTING FROM EMPLOYMENT OR SPECIAL ORDER OR COMMISSION.—In the case of a work prepared by an employee within the scope of his employment or a work specially ordered or commissioned, the employer or other person for whom the work was prepared, unless the parties have expressly agreed otherwise, shall have in respect of the work resulting from employment, only the right to use the work in the regular business of the employer and in respect of the ordered or commissioned work only the right to use the work for the specific purpose for which it was prepared, but in either case the employee or other person preparing such work may not make or authorize any competitive use, provided, however, that where such work is a supplementary work or is a derivative work based upon a preexisting copyrighted work of the employer or other person for whom the work was prepared, the latter, unless the parties have expressly agreed otherwise, shall be deemed the owners of all rights therein and the provisions of sections 203 and 304(c) shall not apply."

Under this proposal, the work created by an employee in the course of his employment or a work specifically ordered or commissioned would be treated in a manner somewhat similar to that under the "shop right" doctrine as it has developed decisionally in the patent law, where the employee-inventor is the initial owner of the statutory right.[2] The employer would acquire in any event the right to use the work as needed for the purpose of his regular business or for the purpose for which it was commissioned, with the creator retaining the remainder of the bundle of rights provided for in the statute, although he would not be permitted to authorize competing uses. Such treatment would be a fair consensual implication from the relationship. There is no particular warrant for the employer of an author to receive an even more favorable legal position than the employer of an inventor, since in the patent field the employer not only provides the employee with compensation but with the laboratory and other facilities as well. The parties could, of course, provide otherwise in their contract, as they can under the present statute or could under the presently proposed 201(b). The statutory artifice becomes totally unnecessary because the employer can fully protect himself by obtaining an assignment from the creator-employee. The difference in result is that the bargaining burden; i.e., the necessity to alter the natural relationship, would be upon the employer, the party who normally is favored with the otherwise superior bargaining position and has more ready access to legal advice. The relatively inferior position of the author has been recognized by Congress in the past. The renewal provisions of the 1909 act manifest congressional concern over the improvident business dealings of authors—a concern reflected as to "nonhire" works in the reversion sections of the Register's bill but ignored in the area where protective features are most needed; namely, in situations where the author is an employee or obliged to recognize a hiring relationship.

Such authors "for hire," even when banded together in guilds, must still look to a progressive copyright statute for their rights protection. Their guilds are not in the ordinary case likely to possess sufficient economic strength to fashion a satisfactory collective bargaining agreement with the employers on matters of copyright. They are unlike other union employees whose stoppage of services can bring an employer's business to a swift halt. The employee authors can only hope doubtfully that the employer—normally well stocked in a backlog

[1] The word "employment" and its derivatives shall be used throughout this memorandum to include, unless the context indicates otherwise, those special order or commission situations referred to in the sec. 101 definition, p. 4, lines 29–30.

[2] *United States v. Dubilier Condenser Corp.*, 289 U.S. 178, 77 L. Ed. 1114 (1933)); *Cahill v. Regan* (4 App. Div. 2d 325, 165 N.Y.S. 2d 125 (2d Dept. 1957)).

of recorded and other materials of authorship—will ultimately respond as he gradually feels the effect of a cutoff in the flow of freshly created material.

An exception is made in the provision suggested herewith for supplementary authorship material and derivative works based upon works copyrighted by the employer. Thus, unless the contract provides otherwise, the entire copyright in the new and closely related works would belong by statute to the employer, in effect, as an assignee. In addition, sections 203 and 304(c), providing for termination, would not be applicable to such works. This exception, too, we submit, is a fair consensual implication from the relationship of the parties as to this particular material.

Since a work can be used and exploited in numerous ways in addition to that for which it was created (frequently including uses unforeseeable at the time of creation), it would seem equitable that the actual author be assured of sharing in the benefits of such further utilization. The creator, by his very nature, has a continuing incentive for the exploitation of his work. He would not be content to have it lie dormant, on the shelf, so to speak.[3] The author for hire should not be beset with obstacles in retaining rights not needed or reserved by an employer, and he too should have the right of termination after 35 years. Otherwise when the employer is no longer interested or active or has gone out of business, valuable works will realistically be lost to the author and the public.

As the law now stands and as H.R. 4347 proposes, it is the employer who, although bargaining and calculating his compensation to the author on the basis of his specific and immediate need for the service, is nevertheless the one-sided beneficiary of the unforeseen business opportunity provided by supplementary or novel exploitation. There seems no justification for this rule other than that attempted in the argument that the author has been paid for the work he did and is entitled to nothing more. Yet, it is equally true that the employer has received all he bargained for when he receives, for example, the song or the music he requested for the project at hand. Clearly the equitable balance here favors the author, especially when it is considered that the basic constitutional purpose of the copyright law is the advancement of art through protection of its creator.

"The Congress shall have Power • • • to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." (U.S. Constitution, art. I, sec. 8.)

There does indeed exist a genuine question as to the constitutionality of a statutory provision which specifically provides that parties other than the creator be considered for purposes of copyright as the "author" of a work of art, thus granting such parties the exclusive right which the Constitution empowers Congress to secure to authors. Such constitutional doubt should not be minimized here since the authorship status for the purpose of rights ownership would be conferred upon one not the true author, to the exclusion and detriment of the true author. There can be little doubt that the word "author" historically has meant the true or actual author in the ordinary sense of the word. This is in fact the view of the cases nearest in time to the adoption of the Constitution. They reject a concept of vicarious authorship.[4] Certainly the framers of the Constitution did not envisage today's giant entertainment corporations as "authors." Thus the Register's proposed bill needlessly and unfairly impairs the composer's constitutional status in its gratuitous maintenance of the employer as author anomaly.[5]

It is significant to note that, contrary to an impression that prevails in many quarters, the congressional committees responsible for the work made for hire

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[3] An apt illustration is the case of the composer Gail Kubik and his "Symphonie Concertante." This work, which was entirely based upon Kubik's film score for the 1942 motion picture entitled "G Man," received in 1952 the first Pulitzer Prize award in music given after a lapse of some years. Kubik had been able to reserve rights other than the motion picture rights. By 1951 the producer, Laurel Films, Inc., had become inactive and was later dissolved.

[4] *DeWitt v. Brooks* (7 Fed. Cas. 575, No. 3851); *Atkill v. Ferrett* (2 Fed. Cas. 197, No. 640 (C.C.S.D.N.Y. 1846)); *Boucicault v. Fox et al.* (3 Fed. Cas. 977, No. 1691 (C.C.S.D. N.Y. 1862)).

See also: *Roberts v. Meyers* (20 Fed. Cas. 809, No. 11,906 (C.C.D. Mass. 1860)).

[5] Cf. Nimmer on Copyrights, sec. 6.3 (1964).

provisions of the 1909 act did not have in mind a broad copyright disqualification of the employed author applicable to unlimited classes of works. According to the most extensive Ringer studies,[4] the focus of the committees was upon staff-written material for composite or cyclopedic works prepared by a number of salaried employees for purposes of publication by an employer-publisher. Referring to the final committee report concerning renewals, "In the case of composite or cyclopedic works to which a great many authors contribute for hire • • •" [H. Rept. No. 2222, S. Rept. No. 1108, 60th Cong. 2d sess. 15, 1909] Miss Ringer states:

"It seems that the committee's major concern in this situation—if not its only concern—was with cases where a number of authors contributed to a single work. It is almost as if the committees were unaware that the provisions concerning • • • works made for hire had been added to the bills they were reporting" (p. 131).

"When the drafter of the final Smoot-Currier bill in 1909 prepared the renewal section, he imported intact the language giving a special term to works copyrighted by employers for hire into the provision giving proprietors renewal in their own right. The committee reports on this final bill indicate a likelihood that the legislators regarded a 'work made for hire' as a species of 'composite or cyclopedic work,' and did not realize the breadth of the exception they were creating" (pp. 138–139).[5]

Not only, therefore, does the legislative history of the emergence of the for-hire provisions into the 1909 act fail to support the sweeping divestment of rights in all employed authors, as now sought, but the courts themselves interpreting these provisions have regularly declared that an employment relationship per se is not the sole detriment of rights vesting in the employer, but that the contract intention itself must be sought.[6]

Although the proposed bill on the whole succeeds in its intention of improving upon the present state of copyright law, it does, with respect to its works made for-hire provision, effect a retrogression. The bill disregards an important distinction in including within its disqualification of copyright ownership any work by an author-employee "within the scope of his employment" even if the work created were not the specific product required by his employment duties. In this respect the current proposal rejects the uniform court interpretations of the 1909 act which hold, absent express contractual provision otherwise in favor of the employer, that the employee is entitled to copyright unless his created work was the very thing he was required to accomplish under his employment.[7]

Should it be deemed necessary that the employer have initial copyright in a work because of its composition for his specific need, it is nevertheless unnecessary and unfair to obtain this result through the broad, single category treatment of section 201(b) in the proposed bill. As previously suggested, it is perfectly feasible to treat the employer as initial owner in certain situations and the author-employee as initial owner in other instances.

Thus if a work has independence and unity and is exploitable apart from the larger work of which it was originally a component, or in other media—such as the film score—the employee should have reserved rights as well as the reversion privilege accorded to nonhire authors, in order that there be no wasteful neglect of opportunities for further exploitation as a consequence of the lack of interest, foresight, capability or legal existence of the employer, particularly a producer.

In conclusion, since as demonstrated above, the employer's investment or expense can be safeguarded without recourse to the logic-straining and constitutionally questionable artifice of authorship, it is respectfully submitted that the aforestated provision be inserted in H.R. 4347 in the place of the present section 201(b), and that the other references therein to "works made for hire" be deleted, thus avoiding constitutional problems, equitably recognizing respective, competing interests and reclaiming for the employee who creates a work his rightful status as author of that work, with all the benefits and rights which appropriately flow therefrom.

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[4] Ringer, "Copyright Law Revision," Study No. 31 (Copyright Office, 1960).

[5] It is, of course, strange that a copyright statute should contain the for-hire provision while the patent statute does not—particularly in view of their constitutional parity. Perhaps the Ringer suggestion of a drafting oversight as an explanation for these provisions in the 1909 act is the answer.

[6] See 12 Copyright Law Symposium, 96–101 (Col. Univ. Press, 1963).

[7] See note 8, supra.

SUPPLEMENTAL MEMORANDUM OF THE COMPOSERS & LYRICISTS GUILD OF AMERICA, INC., ON THE "WORKS MADE FOR HIRE" PROVISIONS OF H.R. 4347

This supplemental memorandum is submitted by the Composers & Lyricists Guild of America, Inc., in order to clarify the position of the guild on certain questions raised in the memorandum and statements submitted in behalf of the Motion Picture Association of America, Inc.

It must first be stated again that the purpose of any copyright statute, by constitutional direction, is the promotion of the "Progress of Science and Useful Arts." This is to be done "by securing for limited times to authors * * * the exclusive right to their * * * writings * * *." This constitutional provision, we submit, is a fundamental directive against any copyright legislation which would deprive any creator of his authorship in his works—as is the purport of the "works made for-hire" limitations of H.R. 4347. The primary purpose of these limitations is the protection not of the author but of the employer-exploiter.

As the statistics of the motion picture memorandum show, that industry is indeed huge. In stressing the size of dollar investment and earnings abroad the memorandum ignores the fact that authorship too demands an investment by the creator—years of training and development. Such investment is indeed immeasurable in dollar value, no less in cultural and other values for America abroad. Nor could earnings here or abroad be had by these or any companies without the indispensable authorship embodied in their products. In any event, neither financial size nor earnings abroad can serve to justify the deprivation of copyright in any class of authors.

Corporate bigness here emphatically points up the enormous disparity in the bargaining position between an individual author and one of the constituent film companies. The fact that employed composers have virtually never been able to reserve for themselves the copyright in their film scores is evidence of this fact. The trend toward corporate diversification and bigness can hardly be said to be on the wane. The increasing corporate employment of lawyers, doctors, engineers, and other professionals augurs the continued enlargement of the employee author class.

If authors increasingly turn toward employment, it will ordinarily be a matter of necessity rather than preference. The employer who will commonly pay far more for a restricted right to use a work when acquired from an independent author, should not be permitted to swallow up the authorship status or entirety of rights when the work results from employment. In either situation where exploitable rights or even the copyrights are retained by the author through the bargaining process, there is no effect upon the producers' invariable copyright ownership of the motion picture. That copyright ownership is not disturbed by the reservation of rights or even copyrights in underlying components within the film (such is indeed the common practice in the motion picture industry where the film use of songs and stories is frequently by virtue of a license from an outside copyright owner). In both cases the reversion privilege when exercised by the author as to his particular component would still permit the producer to continue the indefinite use of his derivative product embodying the use of such component.

The motion picture memorandum appears to confuse the suggested application of a concept akin to the patent shop right. Our proposal in this connection does not limit and was not designed to limit the quantum of exploitable rights to be acquired or retained by the parties through the bargaining process. It was offered—and in favor of the employer—to meet the situation where there are no written contractual guidelines as to the exploitable rights intended to be assigned to the employer. In this contingency the employer is in any event assured of the right to use the work as needed for the purpose of his regular business or for the purpose for which it was commissioned. Surely this is an adequate solution where the employer is satisfied to dispense with the written contract.

The composer's situation, for example, is in some respects different from that of the workers and inventors to whom the shop right doctrine is ordinarily applied in that he does not use his employer's laboratory, material, equipment, or prior discoveries; nor has he been trained by the employer or served a period of apprenticeship with him. It is rather the case that when a composer is engaged to do a film score he is an accomplished composer in one field or another and deserves by all standards to be deemed the author of the work he composed, with all the benefits that flow therefrom. Neither the film producer's investment nor

his copyright ownership of the film would be placed in jeopardy by the statutory recognition of the composer's authorship nor would he receive less from the composer than what he had bargained for; namely, the exclusive use of the music in films. He can, of course, as a result of bargaining obtain more, including an assignment of copyright and all exploitable rights in the music, but it seems far more equitable, particularly in view of the aforementioned constitutional directive, that the burden of such bargaining be placed upon the producer rather than upon the composer.

The memorandum submitted by the motion picture companies fails totally to justify their present favored position. On the one hand they have treated the act of 1909 as an anachronistic remnant and on the other as a venerable codification, taking a strong position for general revision of that statute but strongly urging the retention of their revered "works made for hire" provision. As pointed out in the Ringer studies (Copyright Law Revision, Study No. 31, Copyright Office, 1960), the drafters of the present statute attached to the expression "work made for hire" the narrow meaning of a "composite or cyclopedic work." It is the expanded meaning, however, that is intended in the proposed bill, a meaning which is historically doubtful if not inaccurate, may well be unconstitutional, and is certainly inequitable.

The Register's proposal we submit is faulty, since it extols expedience over fairness. No justification is to be found in the asserted convenience of assimilating the employer to the author for all purposes, including the vesting of all rights in him. Such questions as may arise here concerning divided ownership, for example, are common to all works under copyright, whether created under employment or otherwise. Nor does the use or the interpretation of statutory language of general import present any unique problem solely because the statute relates to copyright. Assuming even that fewer practical problems as to ownership would arise under the Register's proposal, it is pertinent to ask whether this should compromise the fairness which is the admitted purpose of the present revision. Should the authorship status of any class of creators be obliterated in favor of an employer because of expedience?

Mr. KASTENMEIER. Thank you very much.

Next we will hear from Mr. Philip B. Wattenberg, representing Music Publishers' Association.

STATEMENT OF PHILIP B. WATTENBERG, ON BEHALF OF MUSIC PUBLISHERS' ASSOCIATION OF THE UNITED STATES, INC.

Mr. WATTENBERG. Mr. Chairman, I have Mr. Ed Lorenz with me. He is a member of our association.

Mr. KASTENMEIER. Welcome to the committee, Mr. Lorenz.

Mr. WATTENBERG. I am an attorney admitted to practice in the State of New York and my office address is 609 Fifth Avenue, New York, N.Y., 10017.

I have been specializing in copyright law since 1944 and am a member of Copyright Committee 304 of the American Bar Association.

I appear here for Music Publishers' Association of the United States, Inc., for which I act as general counsel.

This association is a trade association organized in 1895, consisting of 50 prominent publishers of educational, sacred, and standard musical compositions.

The association strongly favors passage of H.R. 4347.

I have been a member of the panel of consultants to the Register of Copyrights since 1958 and have participated in meetings of the panel throughout the drafting stage of the bill. H.R. 4347 represents the culmination of the combined efforts of the Copyright Office and the

EXHIBIT 11 - LETTER DATED JUNE 7, 1968 -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

GUILD of
COMPOSERS and LYRICISTS AMERICA, inc.

TED CAIN
Executive Director

Friday, June 7, 1968

Dear Al: Chamie

I have let the TV Networks up to a deal with but one stumbling block.....HSV and Pension Plan.

Your present method of operation calls for a definite employer-employee relationship.
The nets want to use their established Independent Contractor form of agreement.
CLGA wants the nets to pay into these plans as if they were the employer.
The Nets intimte that they might be willing to do so if it were possible.

What sort of argument might sway you and your Board of Trustees to open the doors for us? ?

I'll call you Monday Morning to see what the prospects are.

Regards,

Ted

EXHIBIT 12 - W-2 FORM DATED MARCH 2, 1972 -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

FORM W-4 (Rev. Jan. 1967)
U.S. Treasury Department
Internal Revenue Service

EMPLOYEE'S WITHHOLDING EXEMPTION CERTIFICATE

Type or print full name [illegible] Social Security Number

Home address [illegible] City [illegible] State [illegible] ZIP Code

EMPLOYEE:
File this form with your employer. Otherwise, he must withhold U.S. income tax from your wages without exemption.

EMPLOYER:
Keep this certificate with your records. If the employee is believed to have claimed too many exemptions, the District Director should be so advised.

HOW TO CLAIM YOUR WITHHOLDING EXEMPTIONS

1. If SINGLE (or if married and wish withholding as single person), write "1." If you claim no exemptions, write "0" . . . . . —
2. If MARRIED, one exemption each is allowable for husband and wife if not claimed on another certificate.
   (a) If you claim both of these exemptions, write "2"; (b) If you claim one of these exemptions, write "1"; (c) If you claim neither of these exemptions, write "0" . . . . . —
3. Exemptions for age and blindness (applicable only to you and your wife but not to dependents):
   (a) If you or your wife will be 65 years of age or older at the end of the year, and you claim this exemption, write "1"; if both will be 65 or older, and you claim both of these exemptions, write "2" . . . . . —
   (b) If you or your wife are blind, and you claim this exemption, write "1"; if both are blind, and you claim both of these exemptions, write "2" . . . . . —
4. If you claim exemptions for one or more dependents, write the number of such exemptions. (Do not claim exemption for a dependent unless you are qualified under Instruction 4 on other side.) . . . . . —
5. If you claim additional withholding allowances for itemized deductions fill out and attach Schedule A (Form W-4), and enter the number of allowances claimed (if claimed, file new Form W-4 each year) . . . . . —
6. Add the exemptions and allowances (if any) which you have claimed above and write total 1
7. Additional withholding per pay period under agreement with employer. (See Instruction 1) . . . . . $

I CERTIFY that the number of withholding exemptions claimed on this certificate does not exceed the number to which I am entitled.

(Date) 3/2/72 19—— (Signed) [signature]

648—10—79061-1

EXHIBIT 13 - CLGA DIRECTORY - ANNEXED TO
AFFIDAVIT OF SIMON ROSE

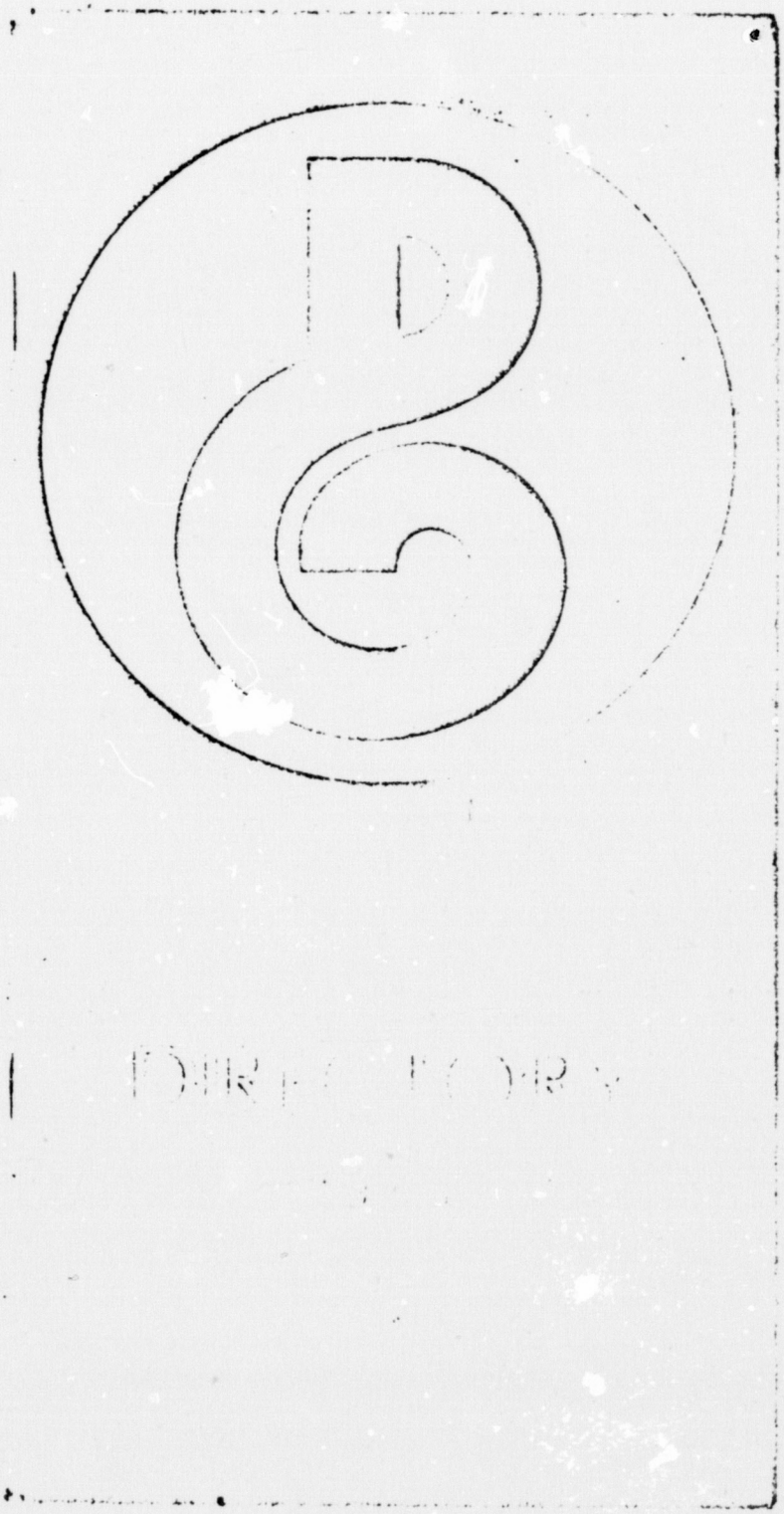

EXHIBIT 13 - CLGA DIRECTORY - ANNEXED TO AFFIDAVIT OF SIMON ROSE

Composers and Lyricists Guild of America Inc.

CLGA is a labor union,, duly certified by the NLRB to represent composers and lyricists in their employment relationships with producers of theatrical and television motion pictures.

The Guild has agreements with all of the Major Film Companies and Independents and the Networks. ABC. CBS and NBC.

CLGA's Hollywood, New York and European membership includes virtually every top-ranking lyricist and composer writing today for theatrical and television motion pictures as well as almost every winner of the Oscar, Emmy and Grammy awards.

EXHIBIT 14 - LETTER AGREEMENT DATED MAY 28, 1969 -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

H/P-1 3-12-69

1-0-3

To the Motion Picture Health and Welfare Fund
606 North Larchmont Boulevard
Los Angeles, California 90004

To the Directors of the Motion Picture Industry Pension Plan
7423 Beverly Boulevard
Los Angeles, California 90036

1. The undersigned employer hereby represents and declares:

a. That he produces Motion Pictures in the Los Angeles area, or that his business is primarily the furnishing of materials or services for motion picture production in said area.

b. That he is familiar with the provisions of the Agreement and Declaration of Trust establishing the I.A.T.S.E.-Basic Crafts-Guilds-Hollywood Producers Health and Welfare Fund for the employees of the Motion Picture and Allied Industries dated October 20, 1952 and herein referred to as the "Health and Welfare Fund", and with the terms and conditions of the Motion Picture Industry Pension Plan dated October 26,1953, as amended, hereinafter referred to as the "Pension Plan."

c. That a collective bargaining agreement in conformity with the law for the employee units described below does exist between the undersigned and each of the appropriate unions. Such unions are parties to the Health and Welfare Fund as set forth in Section 3, Article I of the Health and Welfare Fund, and are parties to the Motion Picture Industry Pension Plan, as set forth in Section 3, Article I of the Pension Plan.

d. That in accordance with such collective bargaining agreements, the undersigned employer acknowledges an obligation and agrees to make contributions in accordance with Sections 1 and 2 of Article V of the Health and Welfare Fund, and in accordance with Sections 2 and 3 of Article III of the Pension Plan, for the period commencing as of_____(for the Health and Welfare Fund) and _____(for the Pension Plan) to and including January 31, 1973 at rates determined in accordance with the applicable subsections of Exhibit A(5) of the Health and Welfare Fund and of Exhibit A(5) of the Pension Plan, respectively.

e. Employer shall for the period specified for the Pension Plan in subsection d. above pay to the Pension Plan through its Administrator as Agent for the Health and Welfare Fund a further three and one-fourth cents (3¼¢) for each work hour guaranteed by or each hour worked for such employer by employees for whom employer is obligated to make contributions under the Pension Plan as set forth in Exhibit A(5) of the Pension Plan which further three and one-fourth cents (3¼¢) shall be kept separate and apart from any funds of the Pension Plan and shall be paid to the Health and Welfare Fund for the Retired Employees Fund upon demand by the Health and Welfare Fund.

Employer shall be obligated to make the contributions specified in this subsection e. with respect to any employee only as, if and when such employee has contributed to the Pension Plan the amount required from him as provided in Section 2. below.

f. Also for the same period and for all hours guaranteed or worked as specified in subsection e. above the employer shall pay to the Pension Plan through its Administrator as Agent for the Contract Services Administration Trust Fund the following further sums:

One cent (1¢) to and including January 31, 1970, and one and one-fourth cents (1¼¢) thereafter. Such further sums shall be kept separate and apart from any funds of the Pension Plan and shall be paid to the Contract Services Administration Trust Fund upon demand by such Fund.

g. The undersigned employer is an employer within the provisions of Section 1 of Article I, of the Health and Welfare Fund and Pension Plan respectively. The undersigned by this document adopts and intends to become a party to and to participate in the Health and

HENRY MANCINI ENTERPRISES, INC.

MAY 29 1969

12-0-4

Welfare Fund to the same extent as though the undersigned had executed such Trust Agreement or a counterpart thereof, in accordance with Section 2, Article IX of said Health and Welfare Fund and to become a party to and participate in the Pension Plan by the execution of this document, in accordance with Section 2, Article XIII, in lieu of execution of Exhibit C of said Plan with respect to the employee units covered in the respective collective bargaining agreements.

h. The undersigned employer appoints as his agent (check one, if any)

( ) Association of Motion Picture and Television Producers, Inc.

( ) _____
(Others)

to act for him under each of the terms and conditions of said Health and Welfare Fund and the Pension Plan, except that said agent shall not be empowered to act under the provisions of Article VI, Section 2 of Article VIII, or Section 3 of Article XIII thereof of the Pension Plan, or under the provisions of Article X, Sections 2 and 4 of Article XI, and Section 1 of Article XII of the Health and Welfare Fund.

2. The undersigned union (or unions) acting through their representative or representatives, whose signatures are affixed hereto, declare and represent that the respective collective bargaining agreement referred to above is in effect as specified in subsection d., of paragraph 1 above, and that such respective agreement covers the employee unit represented by such undersigned union with respect to both the Health and Welfare Fund and the Pension Plan. Each of the undersigned unions agrees to be a party to and to be bound by such Health and Welfare Fund and the Pension Plan with respect to the employee unit covered by its above said respective collective bargaining agreement.

In accordance with each such respective agreement the employees covered under such agreement are obligated and each employee shall make contributions to the Pension Plan in accordance with Sections 4 and 5 of Article III of such Plan for the same period of time as specified for the Employer's contribution in paragraph 1 d. above, at rates determined in accordance with the applicable subsection of Exhibit A(5) of the Plan. Accordingly, the Employer shall deduct daily or weekly from the compensation of such daily or weekly employee, as the case may be, the amount of such contribution due from such employee as herein provided, which deduction shall be paid by the Employer into the Pension Plan on behalf of such employee as the employee's contribution to the Pension Plan.

3. The contributions referred to herein shall be made only as to an employee covered by an appropriate collective bargaining agreement. Such money paid by Employer to the Health and Welfare Fund, or the Pension Plan, or to the Administrator of the Industry Pension Plan for transmittal shall not constitute nor be deemed to be wages due to the individual employees nor shall said money so paid, in any manner, be liable for or subject to the debts, contracts, liabilities or torts of of such employees.

Company Name HENRY MANCINI ENTERPRISES, INC.

By [signature]

Title [illegible]

Date 5/20/64

Address 6290 SUNSET BLVD.
L.A. 90028

C. L. G. A.

[signature]

EXHIBIT 15 - FORM LM-2 FILED BY CLGA ON JANUARY 5, 1972 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

U.S. DEPARTMENT OF LABOR
Office of Labor-Management and Welfare-Pension Reports
Washington, D.C. 20210

LABOR ORGANIZATION ANNUAL REPORT
FORM LM-2

Form approved by Bureau of the Budget No. 44-R1132.1

READ INSTRUCTIONS CAREFULLY BEFORE PREPARING REPORT

1. NAME OF LABOR ORGANIZATION (as shown on charter, constitution, etc.)
COMPOSERS & LYRICISTS GUILD OF AMERICA, INC.

2. PERIOD COVERED BY THIS REPORT — From: Month 10, Day 1, Year 70; Thru: Month 9, Day 30, Year 71

3. LM FILE NO. 045181

4.a. AFFILIATION: None

4.b. UNIT DESIGNATION (Local, Lodge, etc.): None

4.c. UNIT NUMBER:

5. CITY, COUNTY AND STATE WHERE CHARTERED TO OPERATE: Los Angeles (CITY) | L. A. (COUNTY) | Calif (STATE)

6. MAILING ADDRESS: (for official mail to the Union) (in care of) NAME OF PERSON: Mr. Ted Cain; NUMBER AND STREET: 6565 Sunset Blvd.; CITY: Los Angeles; STATE: California; ZIP CODE: 90028

7. Are records kept at address listed in item 6? If "NO", give address in item 18. [X] YES [ ] NO

DURING THE REPORTING PERIOD DID YOUR ORGANIZATION DIRECTLY OR INDIRECTLY:

	Yes	No
8. Have any accounts in banks or other financial institutions held in a name other than that of your organization?	☐	☒
9. Liquidate or reduce any liabilities without disbursement of cash?	☐	☒
10. Create or participate in the administration of any business enterprises or other organizations which met the definition of a "subsidiary organization" as that term is defined in the Instructions on page 2?	☒	☐
11. Acquire any goods or property in any manner other than by purchase or dispose of such property in any manner other than by sale?	☐	☒
12. Create or participate in the administration of a trust or other fund or organization, a primary purpose of which is to provide benefits for members or their beneficiaries as defined by Section 3(l) of the Act?	☐	☒

INDICATE BELOW ANY CHANGES IN THE LABOR ORGANIZATION INFORMATION REPORT (LM-1) WHICH HAVE NOT BEEN PREVIOUSLY REPORTED

	Yes	No
13. Does the address in item 6 represent a change?	☐	☒
14. Has there been a change in officers?	☐	☒
15. Have there been any other changes?	☒	☐

AS OF THE END OF THE REPORTING PERIOD:

16. Were any assets pledged as security or encumbered in any other way?	☐	☒
17. Did your organization have any contingent liabilities?	☐	☒

(If the answer to any of the above questions, other than 13 and 14, is "Yes," details must be provided in item 18 below. See specific instructions for items which have been answered "Yes.")

Item No.	18. ADDITIONAL INFORMATION
10	The Guild owns and administers Lyricom Inc. Lyricom Inc employs Guild members who compose for the television networks. Its operations consist of receiving gross compensation for services performed by such employees, disbursing state and federal payroll taxes and pension and welfare payments and remitting the remaining compensation to the employees. The outstanding stock of Lyricom Inc. is held by four members of the Guild's Board of Directors as nominees for the Guild.
15.	See statement attached.

RECEIVED
U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
JAN 7 1972
WASHINGTON, D.C.

(If more space is needed, attach additional sheets with further statement, properly identified.)

Each of the undersigned officers of the above labor organization declares that he is the officer required to sign this report and that the information contained in this report and any accompanying documents, is to the best of his knowledge and belief, true, correct, and complete.

71. SIGNED: [signature] Exec. Dir. (If other title, cross out and write in correct title above.)
Hollywood, CA. (City, State) on 1/5/72 (Date)

72. SIGNED: [signature] TREASURER (If other title, cross out and write in correct title above.)
Hollywood, CA. (City, State) on 1/5/72 (Date)

Form LM-2 (Rev. 4-69), Page 1

EXHIBIT 15 - FORM LM-2 FILED BY CLGA ON JANUARY 5, 1972 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

ENTER AMOUNTS IN DOLLARS ONLY

STATEMENT OF ASSETS AND LIABILITIES

ASSETS Item	Sch.	(Start of Reporting Period) (A)	(End of Reporting Period) (B)
19. Cash on Hand		$ 200	$ 200
20. Cash in Banks		16,962	26,774
21. Accounts Receivable			
22. Loans Receivable	1		
23. U.S. Treasury Securities			
24. Mortgage Investments			
25. Other Investments	2	1,000	1,000
26. Fixed Assets	5	4,148	3,698
27. Other Assets	3	248	210
28. TOTAL ASSETS		$ 22,558	$ 31,882

LIABILITIES Item	Sch.	(Start of Reporting Period) (C)	(End of Reporting Period) (D)
29. Accounts Payable		$	$
30. Loans Payable	6		
31. Mortgages Payable			
32. Other Liabilities	4	646	401
33. TOTAL LIABILITIES		$ 646	$ 401
NET ASSETS			
34. Net Assets (Item 28 less Item 33)		$ 21,912	$ 31,481

STATEMENT OF RECEIPTS AND DISBURSEMENTS

Item CASH RECEIPTS	Sch.	(A)
35. Dues		$ 31,224
36. Per Capita Tax		
37. Fees		1,550
38. Fines		199
39. Assessments		32,579
40. Work Permits		
41. On Behalf of Affiliates for Transmittal to Them		
42. Sale of Supplies		
43. Interest		697
44. Dividends		
45. Rents		
46. Loans Obtained	6	
47. Sale of Investments and Fixed Assets	7	
48. Repayment of Loans Made	1	
49. From Members for Disbursement on Their Behalf		
50. From Other Sources	13	
51. TOTAL RECEIPTS (Items 35 through 50)		$ 66,249

Item CASH DISBURSEMENTS	Sch.	(B)
52. Per Capita Tax		$
53. Fees, Fines, Assessments, etc.		
54. To Affiliates of Funds Collected on Their Behalf		
55. For Account of Affiliates		
56. To Officers:		
(a) Gross	8	
(b) Less Deductions		
57. To Employees:		
(a) Gross $ 26,036	9	
(b) Less Deductions 5,062		20,974
58. Office and Administrative Expense		8,545
59. Educational and Publicity Expense		294
60. Professional Fees		4,800
61. Benefits	11	1,037
62. Loans Made	1	
63. Contributions, Gifts and Grants	12	647
64. Supplies for Resale		
65. Purchase of Investments and Fixed Assets	10	231
66. Taxes		1,343
67. On Behalf of Individual Members		
68. Repayment of Loans Obtained	6	
69. For Other Purposes	14	18,566
70. TOTAL DISBURSEMENTS (Items 52 through 69)		$ 56,137

SCHEDULE 1—LOANS RECEIVABLE

Name of Officer, Employee, Member or Business Enterprise (A)	Purpose of Loan, Security, if any, and Arrangement for Repayment (B)	Loans Made During Period (C)	Repayments Received During Period (D)	Balance at End of Period (E)
1.		$	$	$
2.				
3.				
4.				
5.				
6. Total Additional Listings, if any				
7. Total Loans not Listed Above				
8. Totals of lines 1 through 7 (Enter the totals of columns (C), (D), and (E) in items on page 2 as shown)		$ .62	$ .48	$ .22

Form LM-2 (Rev. 6/69) Page 2

EXHIBIT 15 - FORM LM-2 FILED BY CIGA ON JANUARY 5, 1972 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

ENTER AMOUNTS IN DOLLARS ONLY

SCHEDULE 2—OTHER INVESTMENTS (See Instructions, Item 25)

Description (A)	Amount (B)
Marketable Securities:	
1. Total Cost	$
2. Total Book Value	
3. Itemize each Marketable Security holding over $1,000 where book value exceeds 20% of the total on line 2 above.	
(a)	
(b)	
(c)	
(d)	
Other Investments:	
4. Total Cost	1,000
5. Total Book Value	1,000
6. Itemize each Other Investment holding over $1,000 where book value exceeds 20% of the total on line 5 above.	
(a)	
(b)	
(c)	
(d)	
7. Total of lines 2 and 5	$ 1,000
(Enter the total in item on page 2 as shown)	25

SCHEDULE 3—OTHER ASSETS (See Instructions, Item 27)

Description (A)	Book Value (B)
1. Rent Deposit	$ 210
2.	
3.	
4.	
5.	
6. Total of lines 1 through 5	$ 210
(Enter the total in item on page 2 as shown)	27

SCHEDULE 4—OTHER LIABILITIES (See Instructions, Item 32)

Description (A)	Amount at End of Period (B)
1. Employee payroll deductions	$ 401
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9. Total of lines 1 through 8	$ 401
(Enter the total in item on page 2 as shown)	32

SCHEDULE 5—FIXED ASSETS (See Instructions, Item 26)

Description (A)	Cost or Other Basis (B)	Total Depreciation (If any) (C)	Book Value (D)
1. Land (Give Location):	$		$
2. Buildings (Give Location):		$	
3. Automotive Equipment			
4. Office Furniture and Equipment	6,481	2,783	3,698
5. Other Fixed Assets			
6. Totals of lines 1 through 5	$ 6,481	$ 2,783	$ 3,698
(Enter the total of column (D) in item on page 2 as shown)			26

SCHEDULE 6—LOANS PAYABLE

Source (A)	Arrangements for Repayment (B)	Loans Obtained During Period (C)	Repayment of Loans During Period (D)	Balance at End of Period (E)
1.		$	$	$
2.				
3.				
4.				
5. Total from Additional Listings, if any	XXXXXXXXXX			
6. Totals of lines 1 through 5		$	$	$
(Enter the totals of columns (C), (D), and (E) in items on page 2 as shown)		46	48	30

SCHEDULE 7—SALE OF INVESTMENTS AND FIXED ASSETS (See Instructions, Item 47)

Description of Assets Sold (If Land or Building, Give Location) (A)	Cost (B)	Book Value (C)	Gross Sales Price (D)	Amount Received (E)
1.	$	$	$	$
2.				
3.				
4.				
5. Totals of lines 1 through 4	$	$	$	$
(Enter the total of column (E) in item on page 2 as shown)				47

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EXHIBIT 15 - FORM LM-2 FILED BY CLGA ON JANUARY 5, 1972 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

SCHEDULE 8—DISBURSEMENTS TO OFFICERS (See Instructions, Item 56)

Name (A)	Title (B)	Status (C)	Gross Salary (before taxes and other deductions) (D)	Allowances (E)	Other Direct and Indirect Disbursements: Expenses Including Reimbursed Expenses (F)	Other Disbursements (G)	Total (H)
1.			$	$	$	$	$
2.							
3.							
4.							
5.							
6.							
7. Total from Additional Listings, if any							
8. Totals of lines 1 through 7			$	$	$		$

(Enter the total of column (H) in item on page 2 as shown) ..... 56(a)

SCHEDULE 9—DISBURSEMENTS TO EMPLOYEES (See Instructions, Item 57)

Name (A)	Position (B)	Name of Affiliated Organization (if applicable) (C)	Gross Salary (before taxes and other deductions) (D)	Allowances (E)	Other Direct and Indirect Disbursements: Expenses Including Reimbursed Expenses (F)	Other Disbursements (G)	Total (H)
1. Ted Cain	Executive Director		$ 13,000	$	$	$	$ 13,000
2.							
3.							
4.							
5. Total from Additional Listings, if any							
6. Total for all employees who, during the reporting period, received $10,000 or less in salary, allowances, and other direct and indirect disbursements			13,036				13,036
7. Totals of lines 1 through 6			$ 26,036	$	$	$	$ 26,036

(Enter the total of column (H) in item on page 2 as shown) ..... 57(a)

SCHEDULE 10—PURCHASE OF INVESTMENTS AND FIXED ASSETS (See Instructions, Item 63)

Description of Assets (if land or buildings, give location) (A)	Book Value (B)	Amount Paid (C)
1. Office furniture and fixtures	$ 215	$ 231
2.		
3.		
4.		
5.		
6. Totals of lines 1 through 5	$ 215	$ 231

(Enter the total of column (C) in item on page 2 as shown) 65

SCHEDULE 11—RECEIPTS (See Instructions, Item 61)

Type of Receipt (A)	To Whom Paid (B)	Amount (C)
1. Health & Welfare	Motion Picture Health & Welfare Fund	$ 1,037
2.		
3.		
4.		
5. Total of lines 1 through 4		$ 1,037

(Enter the total in item on page 2 as shown) 61

SCHEDULE 12—CONTRIBUTIONS, GIFTS AND GRANTS (See Instructions, Item 63)

Type (A)	Amount (B)
1. Grant to Educational Fund	$ 100
2. Gift to outgoing president	306
3. Christmas Gifts & Gratuities	241
4.	
5. Total of lines 1 through 4	$ 647

(Enter the total in item on page 2 as shown) 63

SCHEDULE 13—OTHER RECEIPTS (See Instructions, Item 50)

Other Sources (A)	Amount (B)
1.	$
2.	
3.	
4.	
5.	
6. Total of lines 1 through 5	$

(Enter the total in item on page 2 as shown) 50

SCHEDULE 14—OTHER DISBURSEMENTS (See Instructions, Item 64)

Other Purposes (A)	Amount (B)
1. Employee payroll deductions	$ 5,062
2. Negotiation expenses (primarily professional fees)	13,504
3.	
4.	
5.	
6. Total of lines 1 through 5	$ 18,566

(Enter the total in item on page 2 as shown) 64

Form LM-2 (Rev. 6/69) Page 4

EXHIBIT 15.- FORM LM-2 FILED BY CIGA ON JANUARY 5, 1972 -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

CASUALTY & LIABILITY FUND OF AMERICA INC.

FOR THE YEAR ENDING SEPTEMBER 30, 1971

SCHEDULE: FORM LM-2 LINE 18

Dividends to Policyholders

The amount may be increased or decreased as a result of dividend operations for subsequent calendar years by the Board of Directors.

Income Taxes

Effective October 1, 1970 the annual dividend for each policyholder will be 25% of the premium.

Effective October 1, 1971 the annual dividend will be 20% to 30% of premiums depending upon the amount of losses incurred to premiums earned for the year. Dividends are payable to policyholders about March 1st.

Federal Income Taxes

As of March, 1971 the Internal Revenue Service assessment of $100,000 with interest to the settlement date which was called on December 1, 1971 and is currently in progress.

EXHIBIT 16 - LETTER DATED JANUARY 6, 197[illegible]
ANNEXED TO AFFIDAVIT OF SIMON [illegible]

Composers & Lyricists Guild of America Inc.

6565 Sunset Blvd. / Suite 419 / Hollywood, Calif. 90028 (213) 462-6068

January 6, 1972

Board of Governors
HENRY MANCINI
Chairman
BURT BACHARACH
ALAN BERGMAN
QUINCY JONES
HENRY MANCINI
DAVID RAKSIN
LALO SCHIFRIN
HARD M. SHERMAN

OFFICERS
Hoyt Bernstein
President
Sidney M. Sherman
Vice President
Jack Elliott
Secretary
Ivo Murray
Treasurer

EXECUTIVE BOARD
Jeff Alexander
Paul Beaver
Bruce Carter
Jerry Cooke
Norman Gimbel
Ernest Gold
Jerry Goldsmith
David Grusin
Arthur Hamilton
J. Johnston
Sy Livingston
Larry Orenstein
George Tipton
Leonard Rosenman
Nathan Scott
Fred Steiner

BEN CAN
Executive Director

Mr. Jerry Spain
Vice President
Local 6
American Federation of Musicians
230 Jones Street
San Francisco, California 94102

Dear Jerry:

The Composers and Lyricists Guild of America, Inc., a duly NLRB authorized Union representing the composers and lyricists working for Producers making Theatrical and Television Motion Pictures through-out the United States, is on strike against the Association of Motion Picture and Television Producers, Inc.

Since 1960 we have had a minimum basic agreement with the Association which represents all of the Major Studios and Independents of note.

This agreement expired December 1, 1971 and we have been unable to arrive at a new agreement because the Producers refuse to bargain. We have invoked Federal Mediation to no avail.

So, on December 1, 1971, we went on strike. We have the unanimous support of our membership, who, incidentally are all AFM members except some of the lyric writers. We have, at the direction of Hal Davis, the AFM President, the moral support of the playing musicians who have been notified by the International that the playing member will not be penalized for observing a CLGA picket line. I believe Mr. Davis has so notified all locals.

This letter is to advise you of a particular case. A producing company who was signatory to our basic agreement scheduled a recording. We picketed the studio and the musicians refused to cross our lines and the date was called off.

EXHIBIT 16 - LETTER DATED JANUARY 6, 1972 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

Composers & Lyricists Guild of America Inc.

6565 Sunset Blvd. / Suite 419 / Hollywood, Calif. 90028 (213) 462-6068

Board of Governors
[illegible] BERNSTEN
Chairman
[illegible] BACHARACH
[illegible] BERGMAN
QUINCY JONES
HENRY MANCINI
DAVID RAKSIN
LALO SCHIFRIN
ARD M. SHERMAN

OFFICERS
Howie Bernstein
President
Richard M. Sherman
Vice President
Jack Elliott
Secretary
Lyn Murray
Treasurer

EXECUTIVE BOARD
Jeff Alexander
Paul Beaver
Benny Carter
Jerry Fielding
Norman Gimbel
Ernest Gold
Jerry Goldsmith
David Grusin
Arthur Hamilton
J. J. Johnson
Jay Livingston
Larry Oliveri
George Rom[illegible]
Leonard Rosenman
Nathan Scott
Fred Steiner

TED CAIN
Executive Director

January 6, 1972
Mr. Jerry Spain
American Federation of Musicians

I am now informed that the company moved to San Francisco and have completed the job.

The picture is named "PILGRIMAGE". The producer is Metromedia. The score is by Carmine Coppola, a local 47 member and I think he also conducted. Coppola is not a member of our Guild.

What can we do about this?

Sincerely,

Ted Cain
Executive Director

TC:nmc

cc: Sam Middlemen, Local 47

EXHIBIT 17 - LETTER DATED JANUARY 18, 1972 -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

Composers & Lyricists Guild of America Inc.

6565 Sunset Blvd. / Suite 419 / Hollywood, Calif. 90028 (213) 462-6060

Board of Governors
HARRY BERNSTEIN
Chairman
HAL DAVID
BURT BACHARACH
ALEX BERGMAN
CHARLES BOYER
HENRY MANCINI
DAVID RAKSIN
LALO SCHIFRIN
RICHARD M. SHERMAN

OFFICERS
Elmer Bernstein
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Richard M. Sherman
Vice President
Jack Elliott
Secretary
Ivan Murray
Treasurer

EXECUTIVE BOARD
Jess Alexander
Paul Beaver
Benny Carter
Jerry Fielding
Norman Gimbel
Ernest Gold
Jerry Goldsmith
Lionel Grossman
Arthur Hamilton
Dick Johnson
Jay Livingston
Lucy Ostrowski
George Roumanis
Dennis Sandole
Nathan Scott
Fred Steiner

TED CAIN
Executive Director

January 18, 1972

Mr. George Tipton
Star Route - 92334
Box 40
Wrightwood, CA. 92397

Dear George:

I understand that MGM has requested that you appear and perform services for 2 segments of "The Courtship of Eddie's Father", a television series that you have been scoring.

I remind you of the work rule that prohibits a Guild member from performing for an employer who is not a signatory to a CLGA Minimum Basic Agreement, which MGM is not.

I also remind you of the clause in the Minimum Basic Agreement that was in force when you signed your contract that relieves you of any obligation during a strike under our present conditions.

Sincerely,

Ted Cain
Executive Director

TC/z

CC: Harry V. Lojewski, MGM TV Music

**EXHIBIT 18 - LETTER DATED FEBRUARY 2, 1972 -
ANNEXED TO AFFIDAVIT OF SIMON ROSE**

Composers & Lyricists Guild of America Inc.

6565 Sunset Blvd. / Suite 419 / Hollywood, Calif. 90028 (213) 462-6068

February 2, 1972

Mr. Charles S. Boren
Association of Motion Picture
and Television Producers, Inc.
8480 Beverly Boulevard
Hollywood, California 90048

Dear Charlie:

The general membership of the Composers and Lyricists Guild of America, Inc., at a meeting held Monday, January 31, 1972, came to the following decision.

Until further notice, a member of CLGA may work for any employer subject to the following provisions:

1. No member shall render services to any employer for the composing of music to be used in the soundtrack of any motion picture or television motion picture unless the terms of employment are at least as favorable to the member as those provided by the Producer - Composers and Lyricists Guild of America Minimum Basic Agreement of 1967.

2. (A standard clause to be used in contracts between composer and producer.)

   Notwithstanding any other provision contained in this agreement, all terms of the Producer - Composers and Lyricists Minimum Basic Agreement of 1967, which are more favorable to the composer shall be deemed incorporated into and shall control this agreement.

3. A member shall not sign such a contract for more than one picture or one segment of a television series at a time.

4. All agreements, whether contracts or letters of agreement, must be on file with the CLGA office prior to our approval being given to permit a member starting work on a project.

Yours truly,

Executive Director

TC: z 248a

Board of Governors
EMIL BERNSTEIN
Chairman
BURT BACHARACH
ALAN BERGMAN
QUINCY JONES
HENRY MANCINI
DAVID RAKSIN
LALO SCHIFRIN
RICHARD M. SHERMAN

OFFICERS
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Richard M. Sherman
Vice-President
Jack [illegible]
Secretary
Jan Stuart
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David Grusin
Arthur Hamilton
J.J. Johnson
Jay Livingston
Larry Orenstein
George Roumanis
Leonard Rosenman
Nathan Scott
Fred Steiner

TED CAIN
Executive Director

EXHIBIT 19 - 1960 MINIMUM BASIC AGREEMENT -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

(Reproduced herein at pages 250a through 271a)

PRODUCER - COMPOSERS AND LYRICISTS GUILD OF AMERICA MINIMUM BASIC AGREEMENT OF 1960

THIS AGREEMENT, executed as of this 1st day of June, 1960, by and between COMPOSERS AND LYRICISTS GUILD OF AMERICA, an unincorporated association of composers and lyricists, hereinafter referred to as the "Guild," and _____ hereinafter referred to as the "Producer."

W I T N E S S E T H:

Article 1. Definitions

The following terms or words used herein shall have the respective meanings indicated below:

(a) A "composer" is a person who is employed by the Producer for the purpose of composing music and/or lyrics for use in the production of motion picture photoplays.

(b) "Composing" is the act, process or art of creating music or lyrics or both.

(c) "Underscoring" is music composed or used to accompany dramatic action or visual images in motion pictures, but having no significance to the actors and of which the actor is not, as part of the story or plot, aware.

(d) "Song" is (i) the music and lyric of any separate musical composition of which the actors in the motion picture are aware as part of the plot or story, or (ii) the music and lyric of a separate musical composition intended to be heard by the audience.

(e) A "member of the Guild in good standing" shall be a member of the Guild who has tendered the initiation fees and periodic dues uniformly required as a condition of acquiring or retaining membership.

Article 2. Effective Date

The effective date of this agreement is June 1, 1960. The terms and conditions of this agreement shall not apply to individual employment contracts with composers in effect on June 1, 1960, during the term of such contracts including option extensions thereof, except however that Article II herein entitled "Rights Arising From Compositions" shall be applicable as of June 1, 1960 with respect to compositions which would otherwise be subject to this agreement and which are written on and after such date under such contracts.

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BOBAK, REPORTER

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Article 3. Term of Agreement

The term of this agreement shall commence on June 1, 1960 and shall continue to and including May 31, 1964. The provisions of this agreement shall continue in effect during negotiations for extension or modification of this agreement, which shall commence sixty (60) days after written notice by either party but not prior to April 1, 1964, and the new agreement shall be effective upon and as of a date to be agreed upon during the negotiations.

Article 4. Recognition

(a) This agreement shall apply only to services rendered under employment with Producer. It shall not apply to material purchased or otherwise licensed, nor to independent contractors, or supervisory employees, or to other employees whose participation in writing lyrics or music may be incidental to their bona fide employment in other capacities.

When a person is under the direction and control of the Producer as to the selection of and the manner and means by which the music for the motion picture is to be composed, he shall not be deemed to be an independent contractor. The conducting of an orchestra, as such, shall not thereby necessarily constitute such person a supervisory employee, for the purpose of this agreement.

(b) The Producer shall deliver to the Guild once each week a list of the names of composers in Producer's employ at any time during the preceding week; provided that failure on the part of the Producer to furnish any list shall not constitute a default by the Producer or a breach of this agreement, unless the Producer fails to deliver such list within seven (7) days after receiving from the Guild a written request so to do. Inadvertent failure on the part of the Producer to comply with the provisions of this paragraph shall in no event constitute a default by the Producer, or a breach of this agreement.

Article 5. Guild Shop

(a) During the term of this agreement, each composer employed by the Producer shall be or become a member of the Guild in good standing on or after the 30th day following the beginning of such employment, or the effective date of this Article, whichever is later.

For the purpose of this paragraph (a) of this Article 5, the date of the beginning of employment shall be the date of the first employment of such a composer with any member company of the Association of Motion Picture Producers, Inc.

The foregoing interpretation of the term "first employment" has been approved in principle by an advisory opinion of the General Counsel of the National Labor Relations Board. If such General Counsel or the local Regional Director of the Board, or the Board or a court of competent jurisdiction shall change such opinion or ruling, then the new ruling or opinion shall prevail until the same is reversed by a court of competent jurisdiction.

(b) The provisions of paragraph (a) of this Article shall not apply:

(1) To a composer who is not a member of the Guild at the time of his first employment, and who does not become a member in good standing within the 30 days, as above provided, for the period necessary to permit him to complete the performance of his services in connection with his then current assignment.

(2) To a composer whom the Producer employs as a condition of the sale or license of material.

(3) To a composer employed by reason of special skill or knowledge.

(4) To a composer who on or before the effective date of this Article entered into an agreement with Producer and who was not on such date a member of the Guild in good standing, for the full term of such employment agreement including options, renewal periods and extensions exercisable by the Producer.

However, the composers employed by the Producer within exceptions (2) or (3) above, shall not exceed 10% of the total number of composers in the employ of the Producer. For the purpose of such computation, if the Producer has in his employ at any time less than ten (10) composers then one of such composers so employed may fall within one of the exceptions mentioned in sub-paragraph (2) or (3) above. Promptly following the employment of any composers claimed by the Producer to be within exceptions (2) or (3) above, the Producer will notify the Guild in writing of the name of the composer employed, the date of the employment agreement and the fact that the Producer claims that such composer is an exception hereunder.

For the purpose of such computation, a composer who is employed under an exclusive contract by a Producer shall be regarded as being employed by the Producer at all times during the term of such contract, including periods during which the composer may be on layoff and periods during which such contract may be suspended by reason of illness or default of the composer or otherwise. The composer shall be regarded as continuing in the employ of the Producer by which he is employed regardless of the fact that his services may be loaned to another Producer.

(c) Promptly after request by any person designated by the Producer, the Guild will admit such person to membership in the Guild upon terms and conditions not more burdensome to such person than those then applicable to other applicants. Membership shall be effective as of the date of such request. Guild agrees that during the term it will not impose any unreasonable initiation fee as a condition to admission to membership, and agrees that during the term hereof it will not impose upon its members any obligation to pay dues that do not uniformly apply to all members of the Guild. It is agreed that the Guild shall not close its membership books or otherwise prevent any person who wishes to become or remain a composer from becoming a member of the Guild, but on the contrary (subject to the provisions hereof relating to waivers as to members suspended or expelled) will make available the privileges of membership to any and all composers employed by the Producer. The Guild will reinstate or readmit to membership any composer who applies for reinstatement or readmission, after being declared to be not in good standing or after suspension, expulsion, or resignation for any reason whatsoever, provided the composer will apply for such reinstatement or readmission and with such application tender to the Guild unpaid dues permitted by law, and upon such tender the Producer may employ or continue to employ such composer. Instead of readmitting or reinstating such composer, the Guild may at its option grant to the Producer a waiver as to such composer, in which event, for the purpose of determining the Producer's compliance with the provisions of this Article 5, such composer shall not be considered as being employed by the Producer.

(d) If during any time that a composer is employed by the Producer under a contract of employment such composer is or becomes a member of the Guild in good standing and if such composer shall subsequently and before his employment under such contract terminates cease to be a member of the Guild in good standing, then:

(1) If such composer has ceased or shall cease to be a member for any reason other than his failure to pay dues, such composer shall, for the purposes of this agreement, be deemed to remain a member of the Guild in good standing throughout the composer's employment under said contract of employment as the same may be extended or renewed.

(2) If the composer has ceased or shall cease to be a member in good standing by reason of his failure to pay dues, such composer shall, for the purposes of this agreement, be deemed to remain a member in good standing for a period of fifteen (15) days after written notice that he has ceased to be a member in good standing for failure to pay dues from the Guild to both such composer and the Producer, and if, prior to the expiration of said fifteen (15) days period payment of said dues shall be made by the composer or the Producer, then for the purposes of this agreement, such composer shall not lose his status as a member in good standing. To the extent that it may be lawful for the Producer to do so the Producer may require as a condition to employment that any composer execute such written consent or consents as may be necessary so that, if the Producer elects, it may pay to the Guild any dues of any composer and the Producer shall have the right insofar as its obligations to the Guild and to any composer under the terms and provisions of this agreement are concerned, if it elects, to deduct the amount of such dues from any compensation then or thereafter due or to become due to the composer; provided, however, that if either such payment or deduction is or shall become contrary to law or any statute or is declared by any court of competent jurisdiction in the State of California or by any Federal court or the National Labor Relations Board or its General Counsel or by any other Board or individual having jurisdiction over the matter to be in violation of any applicable law or statute, and if by reason thereof Producer fails to deduct and pay to the Guild such dues as aforesaid and shall notify the Guild thereof in writing within the fifteen (15) day period after any notice from the Guild above mentioned, then although such dues are not paid within the fifteen (15) day period, for the purposes of this agreement such composer shall nevertheless be deemed to remain a member of the Guild in good standing throughout the term of the composer's employment as the same may be extended or renewed.

(3) Producer may require that if a composer shall fail or refuse to become or remain a member of the Guild in good standing as above provided, its employment agreement with such composer shall terminate.

(4) If the Producer is required or directed by any decision of a court of competent jurisdiction or any proper governmental authority to refund to any composer, in whatsoever form the same may be recovered, any dues deducted and paid to the Guild by the Producer under the provisions of subparagraph (2) of this paragraph, the Guild agrees to repay to the Producer the amount

of such dues so refunded. The Guild will cooperate with the Producer in obtaining the necessary authorizations from composers for the payment and deduction of dues in the manner provided in subparagraph (2) above.

(e) The Guild will facilitate employment of its members by the Producer and will at all reasonable times promptly furnish to the Producer in writing information concerning the status of any of its members, and the Producer shall be entitled to rely upon such information so furnished by the Guild. Promptly after the execution hereof the Producer will furnish to the Guild a list of the composers then employed by it.

(f) The Guild represents and warrants that discipline, resignation, admission, reinstatement, readmission and all other matters relating to membership status will at all times during the term hereof be within the exclusive jurisdiction of the Guild; and the Guild agrees that it will exercise such jurisdiction subject to and in accordance with the provisions and intent of this Article 5 and of any other applicable provisions of this agreement.

(g) It is understood that the provisions of this Article 5 shall never under any circumstances be so construed during the term of this agreement as to constitute or permit what is known as a "closed shop" or construed in any manner that will at any time deprive the Producer of its right to employ or continue the employment of a composer who is not a member of the Guild in good standing, or who does not become a member of the Guild in good standing within the period prescribed in paragraph (a) of this Article 5 if the Producer has reasonable grounds for believing that such a membership was not available to such composer on the same terms and conditions generally applicable to other like members of the Guild, or if the Producer has reasonable grounds for believing that membership in the Guild was denied, deferred, suspended or terminated for reasons other than the failure of such person to tender the applicable initiation fee and/or periodic dues uniformly required as a condition for acquiring or retaining membership in the Guild.

Article 6. Credits for Screen Composition

Credit for composition is to be given for the initial use of the composed music or lyrics, but only in the motion picture for which it was specifically composed and used, subject to the following:

(a) Screen credit for composition for underscoring music, subject to this agreement, shall be given to those who actually compose the music used in the motion picture as follows:

(1) Each composer whose music composed for the picture constitutes more than one-third (1/3) of the total underscoring contained in the final motion picture, which contribution shall be determined in minutes, will be given screen credit. However, in no event shall Producer be required to give more than two such composers such credit. If one-third (1/3) or more of the total scoring used in the motion picture is by one composer, he is to receive credit even if the music was previously used, unless such composer does not desire a credit, or it would be a burden on Producer to make such a determination. In any event, credit for any such re-used music need be given by Producer to only one composer. Producer, however, may give credit for composition underscoring to a composer whose music is less than one-third (1/3) of the total underscoring contained in the motion picture.

(2) The form of underscoring screen credit shall be:

"Music by"; or "Music Score by"; or "Music Composed by"; or words of a similar nature; and in addition such other credits as may be agreed upon by the composer and Producer.

(3) The Producer shall give to the Guild and composers of the underscoring music (which is subject to credits) used in the final motion picture, notice of credits intended to be used. If no protest, that an appropriate composer has been denied the required credit, is received from them by Producer within 48 hours, excluding Saturdays, Sundays and holidays, after such notice is given, the credits shall be deemed to be final. If any such composer or the Guild should within such time protest to Producer the lack of such required credit, then the question of whether each of the composers concerned composed more than the required one-third (1/3) of the underscoring should be resolved by the composers involved and the Guild, within 96 hours, excluding Saturdays, Sundays and holidays, after such protest is made. Such a determination of the quantity of such composers contribution shall be final as to the parties involved. The authority of the Guild and such composers shall be limited to this sole issue. If no such determination is made by the Guild and the composers within such 96 hours, the credits as submitted by the Producer shall be final. When such credits so become final, there shall be no appeal of any kind, from them. The above procedure and conditions shall be the exclusive remedy for determining any dispute arising in connection with credits hereunder for underscoring.

(b) The form of credits for songs shall be:

> "New Songs by"; or "Song by"; or "Songs by"; or "Original Songs by"; or "Music & Lyrics by"; or "Words and Music by"; or "Words by and Music by"; or "Lyrics by and Music by"; or words of a similar nature; and in addition such other credits as may be agreed upon by the composer and Producer.

(c) Notwithstanding the above provisions, Producer may give screen credit for composition to a composer who is not entitled to credit as above provided, if such composer has "box office" value.

Producers shall in good faith, make the determination of whether a composer employed by it has "box office" value, as that term is used and understood in the motion picture industry. If the Guild shall claim an abuse by the Producer, the matter shall be submitted to the Cooperative Committee.

(d) The Producer shall not be limited as to the size or placement of the credit.

(e) With respect to material purchased or otherwise licensed, Producer shall have the unlimited right, as it may see fit, to give or not give screen credit for the composition of music or lyrics in any manner.

(f) If a composer, at the time of his employment or at any time thereafter, states in writing that he is not and never was a member of the Communist Party, and such representation is shown to have been false, or if a composer at any time refuses on request of Producer to make a statement as to whether he is or ever was a member of the Communist Party, or if a composer upon such request states in writing that he is a member of the Communist Party, or if a composer before the House Un-American Activities Committee or any similar duly constituted Congressional or State Legislative or executive committee, has refused to testify as to whether he is or was a member of the Communist Party, or if a composer having been subpoenaed to appear before such a committee fails or refuses to appear in response to such subpoena, the Producer shall be relieved of its obligations to the Guild under this Article 6, and shall also be relieved of any obligations to accord credit to the composer under his employment agreement.

The Producer, however, shall not be relieved of its obligation to give such credit by reason of any act or failure to act, on the part of the composer, described in the preceding sentence, if prior to the composer's employment by the Producer (i) such act or failure to act by such composer had occurred and (ii) such occurrence was known to the Producer.

Comp. & Lyr.

Article 7. Cue Sheets

Producer shall prepare for each motion picture a music cue sheet designating the composer of each cue and every part thereof indicating the nature and duration of its use in such motion picture. The cue sheet may also indicate any other information desired by Producer. Upon request of the composer, Producer will furnish one copy of the cue sheet to such composer and one copy to the Guild. If no protest is made to the Producer by the composer within 10 days after receipt by the composer, the composer shall be deemed to have waived any breach of this Article; but if a protest is so made the Producer shall correct the cue sheet if Producer agrees it is erroneous or shall refer the protest to the Conciliation Committee for determination, but such protest shall not be subject to arbitration. An inadvertent failure by the Producer under any provisions of this Article shall not be considered a breach of this agreement.

Article 8. Force Majeure

Suspension of payment of salary permitted by the so-called "force majeure" clause of employment agreements with composers shall be limited with respect to each continuous cause of suspension, as follows:

(a) Composers receiving the minimum compensation, may be suspended for 6 weeks without salary.

(b) Composers receiving above the minimum, but less than $1,000 per week may be suspended for 8 weeks without salary.

(c) As to composers receiving $1,000 per week or more, the matter of suspension of services and reduction of compensation shall be subject to individual negotiations between the Producer and the composer.

Article 9. Delivery of Contracts

Producer agrees that from and after the effective date hereof, upon the employment of any composer, such composer shall be tendered, within a reasonable length of time a written contract setting forth the terms of employment. Upon the full execution of such written employment contract, not less than two (2) copies thereof shall be delivered to the composer or his agent and either or both of such copies shall be executed by the Producer, and if both of such copies are not executed by the Producer, the copy not so executed shall be accurately conformed by an officer or employee of the Producer, who shall place upon any such conformed copy his signature or initials in form sufficient to identify such officer or employee. Upon the full execution of an employment contract between the Producer and a member of the Guild, the Producer will make available at its studio in Los Angeles County, California, a properly conformed copy of such employment agreement, which may be called for and retained by the Guild.

Article 10. Speculative Composition

The Producer and the Guild agree that there shall be no speculative composition, nor shall either party condone it as a practice.

The Producer and the Guild recognize that there is possibly an area wherein the proper and constructive exchange of ideas and criticism between a composer and a Producer may be claimed by the Guild to be speculative composition Whenever the Guild feels that speculative composition has occurred, the case will be referred to conciliation and arbitration and the Producer's intent as determined by the facts shall be an important factor in the consideration.

The Producer will not agree with any composer that the composer shall write on speculation or that payment shall be contingent upon the acceptance or approval of the Producer, except that this does not limit the submission of original composition or prevent the Producer from discussing with any composer any ideas suggested by such composer, or discussing with any composer any ideas or any material suggested by the Producer in order to determine the composer's thoughts and reactions with respect to any such idea or other material for the treatment or development thereof. Without in any way limiting the free exchange of ideas and constructive suggestions in connection with the submission of material by a composer to the Producer, and without limiting the composer's right to revise the material as a result of such exchange of ideas, the Producer and the composer will not, in the absence of a contractual relationship, engage in revising such material under continuous direction and supervision by the Producer.

It is understood that if a Producer enters into an agreement with any person who undertakes to compose material on an Independent Contract or similar basis and the Producer pays such person a separate consideration and receives therefor an option or right of first refusal to acquire the Motion Picture or other rights in such material when completed, neither such agreement, nor the consummation thereof by the acquisition of such rights shall constitute a violation of the provisions of this Article 10.

Article 11. Rights Arising From Composition

(a) As used in this Article 11, the following terms shall have the following meanings:

"Compositions" means any and all music and lyrics written, composed, submitted, added, improvised, interpolated or invented by the Composer in the course of his employment by the Producer.

"Society" means any performing rights society, or other collection agency or organization, which, either directly or through affiliates, maintains a regular system of collecting fees from the users of Compositions for the privilege of performing the same in public for profit, for the benefit of both composer-members and publisher-members, and which divides its aggregate net collections of such fees equally between its publisher-members and composer-members, or which has agreed in writing to divide its net collections with respect to performances of the Compositions involved equally between the Composer and the publisher, hereinafter referred to.

"Performing Rights" means those public performing rights which are, from time to time, as a practical matter, administered and controlled by the Society involved.

(b) The Producer, as employer for hire of the Composer, is entitled to and shall own all rights of every kind and character, without any restriction, limitation or reservation whatsoever, in and to the Compositions, and the copyrights therein, and any and all renewals and extensions of such copyrights everywhere in the world, specifically including the copyrights and all renewals and extensions thereof in the United States. Without limiting the generality of the foregoing, it is specifically understood and agreed that included in the ownership of all rights of the Producer in and to the Compositions is the specific and irrevocable right under any and all circumstances, in perpetuity, to perform publicly for profit, or otherwise, and to authorize others so to do (by any and all present and future methods and means of public performance, whether or not now known or contemplated) the Compositions, or any part or parts thereof, throughout the world. Such rights include, but are not limited to, the Performing Rights, as hereinabove defined.

(c) In order to assure the Composer of participation in the revenue which may be derived from performances of the Compositions, Producer agrees that in the event the Composer is, on the date of his employment by Producer, a member or licensor of a Society, Producer will, and it does hereby, transfer and assign the world-wide Performing Rights (as hereinabove defined) in and to the Compositions to the Composer and a publisher of Producer's choice, which publisher may, but need not, be a subsidiary or affiliate of Producer, but which publisher shall be a member or licensor of the same Society, or of an affiliate of the same Society, as the Composer. Notwithstanding anything herein contained, however, there is hereby excepted and reserved from said transfer and assignment the non-exclusive right to perform the Compositions in any and all situations, throughout the world, where it is, or may from time to time be, unlawful for the Society or any of its affiliated bodies to collect performance fees, or where the Society, or any of its affiliated bodies, does not, from time to time, for any reason whatsoever, actually maintain a regular system of collecting performance fees. In any and all such situations, the Producer may authorize the performance of the Compositions in and as a part of the motion picture in which they are included and trailers thereof, or otherwise, without payment of any performance fees whatsoever to the Composer, or to the Society, or to the publisher or anyone else.

(d) The Producer has agreed to and does hereby transfer and assign the Performing Rights, as set forth in Paragraph (c) above, only conditioned upon and subject to the following:

(1) That the motion pictures (including trailers) and copies thereof containing the Compositions may be exhibited at any place in respect of which there is subsisting a valid license granted by the Society or by one of its affiliated bodies (as the case may be).

(2) That no such license shall be required for performing the Compositions:

(i) for the purpose of reproducing the same in synchronism or time relation with the motion pictures and copies thereof during the production thereof;

(ii) in any of the situations referred to in Paragraph (c) hereof with respect to which Producer reserves the non-exclusive right to perform the Compositions.

(3) That if the proprietor or licensee of any place capable of being licensed by the Society or one of its affiliated bodies fails or neglects to hold a license, as aforesaid, the right of the Society, or of the affiliated body concerned, shall be against such person exclusively.

(4) That, under no circumstances, shall the Society, or any of its affiliated bodies, or the Composer or any successor in interest of the Composer, or the publisher have the right to take any proceedings in respect of any unlicensed performance that would have the effect of enjoining and/or preventing and/or otherwise interfering with the public performance anywhere in the world and by any means or method now or hereafter known of the motion pictures or any portion thereof or any trailer thereof with the Compositions included therein, nor shall the Producer or

the publisher be liable to the Composer for any action that the Society or any of its affiliated bodies may or may not take in administering the Performing Rights or for any payments that the Society may or may not make to the Composer.

(5) That the Compositions need not be published as a condition of the payment of the publisher's share of performance fees.

(6) That neither the Producer nor the distributor nor the publisher shall, under any circumstances, be liable to the Composer or his successors in interest, or to the Society or its affiliated bodies, n or shall the Producer or the distributor be liable to the publisher, for any payment of any sums by reason of performance of the Compositions as contained in the motion pictures, or otherwise.

(7) That under no circumstances shall the Composer or his heirs, executors, administrators or other personal representatives, agents or assigns have the independent right to license performances of the Compositions as included in the motion pictures or trailers thereof, or to otherwise interfere in any way with the distribution and exhibition of such motion pictures containing the Compositions.

(8). That if, after the transfer and assignment referred to in Paragraph (c) hereof, the Composer should resign from or cease to be a member or licensor of the Society, the Performing Rights in and to the Compositions involved shall, nevertheless, continue to be controlled and administered by the Society so long as the publisher remains a member of said Society; that if, after said transfer and assignment, the publisher should resign from, or cease to be a member or licensor of the Society or an affiliate of the Society, the Performing Rights in and to the Compositions involved shall, nevertheless, continue to be controlled and administered by the Society so long as the Composer remains a member of said Society; and that if, after said transfer and assignment, both the Composer and the Publisher shall no longer be members or licensors of the Society or the Society should cease to exist or function, then the Performing Rights in and to the Compositions involved shall revert to the Producer.

Notwithstanding the transfer and assignment referred to in Paragraph (c) hereof, it is agreed that the Publisher shall always have the right to transfer the Performing Rights acquired by it pursuant thereto to another publisher which is a member of the same Society, and the Producer shall always have the right to cause the Performing Rights to be transferred to another publisher which is a member of the same Society.

(9) That for the purpose of protecting the motion picture in which any Composition is used or to be used, the Producer or the Publisher shall always have the right to impose restrictions upon the performance of such Composition apart from such motion picture.

Article 12. No Strike Clause

The Guild agrees that during the term hereof it will not call or engage in any strike, slowdown or stoppage of work affecting motion picture production against the Producer.

The kind of strike referred to hereinafter in this paragraph is a strike called, either (a) pursuant to the written vote therefor of 66% of the votes of active members of the Guild voting on the question at a meeting (called on at least two days advance written notice of the taking of a strike vote) or, in a mail vote; or (b) with the written assent of 66% of the active members of the Guild without a meeting or mail vote.

If, after the expiration or other termination of the term of this contract, the Guild shall call a strike against any producer, then each respective then current employment contract of composer members of the Guild (hereinafter for convenience referred to as "members") with such Producer shall be deemed automatically suspended, both as to service and compensation, while such strike is in effect, and each such member of the Guild shall incur no liability for breach of his respective employment contract by respecting such strike call, provided such member shall promptly, upon the termination of such strike, and on the demand of the Producer, perform as hereinafter in this paragraph provided, and the member shall be deemed to have agreed as follows:

(a) That if the composer has been assigned to the composition of the music or lyric for a motion picture at the time any such strike is commenced, he will, after the termination of such strike and upon the request of the Producer, report to the Producer and perform his services in the completion of such assignment at the same salary and upon the same terms and conditions as were agreed upon prior to the commencement of said strike.

(b) That he will immediately, after the termination of such strike and upon the request of the Producer, execute a new contract on the same terms and conditions, and at the same salary or other compensation as provided in the employment contract which was in effect at the time the strike commenced, except that such new contract shall be for a period or periods, including options, equivalent to the unexpired term of the contract which was in effect when such strike was commenced.

(c) That he will, in lieu of (b), after the termination of such strike, at the option of the Producer, and upon its demand, execute an agreement in writing with the Producer extending the term or period of such personal service contract in effect when such strike was commenced for a period of time equal to the period of any suspension by such strike.

If the member shall fail to perform the foregoing, or if he shall fail actually to finish his services in the assignment mentioned in (a), as provided in (a) (except by reason of his death, physical disability or default by the Producer), then the waiver of liability by the Producer heretofore given shall be null and void.

The member further agrees that the statue of limitations as a defense to any action by the Producer against the member for his failure to perform during such strike is extended by a period equivalent to the duration of such strike and the period of the strike shall not be considered a period of laches. If the member asserts any claim or defense by reason of the expiration of time during

which he can be required to perform services by virtue of any statute (such as the seven year statute) which claim or defense is based in whole or in part on the lapse of time during such strike, the waiver by the Producer is ineffective thereupon, and the statute of limitations as to the Producer's rights is waived by the member automatically.

The automatic suspension provisions of this paragraph shall not affect the Producer's right to sue any individual composer for breach of contract arising during the period of such strike, unless such composer shall have complied with his obligations under the provisions of this paragraph. Nothing herein contained shall be construed to deprive the Producer of its right to terminate the employment contract at any time after such member shall strike or otherwise fail or refuse to perform services.

The provisions of this paragraph shall be deemed included in all employment contracts between composers and Producer which are now in effect and all such employment contracts which shall be entered into during the effective term of this collective bargaining agreement.

The Guild agrees that it will take such affirmative actions as may be necessary and lawful in order to require its members to perform their respective obligations under the provisions of this paragraph.

Notwithstanding the expiration or other termination of the term of this collective bargaining agreement, by termination or otherwise, the provisions of this paragraph shall be and remain in full force and effect for a period of seven (7) years following the termination of any such strike, unless this covenant be sooner terminated by the written consent of Producer and Guild.

No officer, agent, director or member of the Guild shall be liable for any strike, slowdown or work stoppage, unless the same be authorized by the Guild in accordance with its by-laws. However, any officer, agent, director or member who affirmatively participates in, procures or induces the strike, slowdown or work stoppage, contrary to the terms of this agreement, shall not be immunized from liability by reason of the provisions of this Article. Provided, further that the foregoing exemption of the first sentence above shall not apply unless the Guild upon request from the Producer affected thereby shall proclaim promptly and publicly that such strike, slowdown, or work stoppage is unauthorized, and follows such pronouncement within a reasonable time thereafter, if requested so to do by the Producer affected, with disciplinary proceedings in accordance with its by-laws against the participants in such unauthorized action.

Producer agrees it will not call or engage in any lockout of members, during the term of this agreement.

Article 13. Location Expenses

If a composer is required by the Producer to perform services on any location sufficiently far away from the Producer's studio so that overnight accommodations are reasonably necessary, the Producer shall furnish and pay for the reasonable board and lodging of the composer while required to remain on any such location, and agrees to furnish for the composer first-class transporation, if available, to and from any such location, it being understood that such first-class transportation need not include a drawing room or compartment or passage on any so-called "extra fare" train, and the Producer may in any contract of employment between the Producer and a composer designate a reasonable daily maximum liability on the part of the Producer for such board and lodging of the composer.

In addition, Producer shall furnish at such location a musical instrument and such mechanical reproducing and playback instruments as may be necessary or required in connection with his composition.

Article 14. Conciliation Committee

(a) The Producer and the Guild agree that prior to submitting to conciliation any matter properly a subject of conciliation hereunder, an authorized representative of the Guild and an authorized representative of the Producer will meet and in good faith attempt to settle and adjust the difference or dispute. If such representatives fail to settle or adjust the difference or dispute within seven (7) days after the matter has first been brought to the attention of the party not making the claim, such matter may be brought to the attention of the conciliation committee by either party hereto in the manner hereinafter described.

(b) Each Producer and the Guild will set up a Permanent Conciliation Committee consisting of six (6) members selected as follows:

(1) The Guild will promptly designate three (3) members in good standing and as soon as so designated, and in no event later than fifteen (15) days after the execution of this agreement, will in writing notify the Producer for which such committee is organized. The Guild may designate separate representatives for each Producer signatory, but need not do so.

(2) Each Producer will promptly designate three (3) representatives and as soon as so designated, and in no event later than fifteen (15) days after the execution of this agreement, will in writing notify the Guild thereof. Each Producer signatory hereto may designate its own separate representatives or it may designate those named by any other Producer or Producers signatory hereto. The Producer and the Guild may, from time to time, make substitutions for any of their representatives by notice to the other party.

The Conciliation Committee will be maintained at all times during the life of this agreement. Promptly after the Committee has been constituted it shall select a chairman whose term of office shall be one (1) year. During the first year of the term hereof the chairman of the committee shall be a representative of the Guild and during the second year of the term hereof the chairman shall be a representative of the Producer, and the chairmanship shall alternate in like manner thereafter. If either party hereto desires to bring to the attention of the Conciliation Committee any matter properly a subject of conciliation he will serve upon the other party and the chairman of the committee a written notice thereof, which notice shall contain a statement of all matters to be submitted for consideration by the committee. The Chairman of the committee shall within forty-eight (48) hours (excluding Saturdays, Sundays and holidays) call a meeting of the committee by written notice served upon each of the members and shall allow a reasonable time, not to exceed fifteen (15) days, between the time of such call and the time designated for such meeting. The date designated for such meeting may, however, be continued at any time or from time to time with the joint consent of the chairman, who shall be a representative of one of the parties hereto as aforesaid, and any one other member of the Committee who is a representative of the other party. The notice of call of any meeting issued by the chairman shall contain a statement of all matters submitted for consideration by the Committee and the Committee shall not consider or act on any unrelated matter or matters. The Committee shall meet as above provided, consider and act upon all matters properly submitted, and if a decision is concurred in by any five (5) members of the Committee the same shall be the decision of the Committee and shall be final and binding upon the parties to the proceeding. If the Committee shall fail to meet and commence hearings or deliberation upon any matter submitted to it upon the date designated as above provided for such meeting or within a period of fifteen (15) days from the time of such call, whichever is the later, or if

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five (5) members of the Committee shall fail to concur in a decision within fifteen (15) days after first hearing unless otherwise mutually agreed, or if hearing is waived by both parties hereto, after final submission of any matter, the Committee shall lose jurisdiction to act upon the matter so submitted. If the Committee shall lose its jurisdiction over any matter in the manner above provided, then either party hereto may submit such matter to arbitration. Such submission shall be made by written notice, requesting such arbitration, delivered to the other party hereto, and in such event arbitration thereof shall be had in the manner hereinafter provided.

Article 15. Matters Subject to Conciliation and Arbitration

It is expressly understood and agreed that the following matters and only the following matters may be submitted to the Conciliation Committee and thereafter to arbitration, as herein provided:

(a) Any difference between the Guild and the Producer concerning the interpretation of any of the terms of this agreement and its application and effect as determined by an interpretation hereof.

(b) Any alleged default or breach of any of the terms or provisions of this agreement on the part of either party hereto. It is agreed that neither party hereto shall, except before the committee and Board of Arbitration herein provided, claim a default or breach of any of the terms or provisions hereof on the part of the other party hereto or take any action of any nature at law, or otherwise, based upon or in reliance upon the commission or existence of such default or breach until the fact of such default or breach has been determined by a decision of the Conciliation Committee, or by arbitration, as hereinafter provided, in the event the Committee loses jurisdiction over the matter, and then only in the event the party found to have been in default fails to cure the same within the period designated therefor as hereinafter provided. If either party shall in writing notify the Committee or the Board, as the case may be, or the other party to such conciliation or arbitration, that such party does not or will not honor or recognize, as to the alleged default or breach, the decision of the Committee or Board, then as to such party refusing to honor or recognize, the other party is relieved from the obligation to delay taking any action which it may desire. Likewise, if the Committee or Board shall formally decline jurisdiction, then each party is also relieved from the obligation to delay taking any action which it may desire. If the Committee or the Board of Arbitration hereinafter provided for shall find a default or breach of any of the terms or provisions of this agreement on the part of either party hereto it shall specify in writing the nature and extent of such breach or default and, if it finds that the default or breach can reasonably be cured, shall designate the manner in which such party at its option, may cure such breach or default, and a reasonable time within which the party in default may cure such default and if such default is cured within the time so specified then for the purposes hereof such default shall be deemed not to have been committed and the party claiming such default may not take any acton of any nature at law or otherwise in reliance upon the commission or existence of such default.

It is expressly understood and agreed that there is to be no conciliaton or arbitration of any individual disputes between the Producer and any composer and that no determination or decision made by the Conciliation Committee or by arbitration, as herein provided, shall affect the rights of the Producer as against any composer nor the rights of any composer as against any Producer, but shall only control and be binding upon the Producer and the Guild in relation to their rights as against each other. Nothing herein contained shall require any Producer or any composer that are parties to a dispute with respect to or concerning any employment to submit such dispute to conciliation or arbitration hereunder or be

Comp. & Lyr.

construed so as to prevent immediate recourse to the courts by either party to such dispute. The decision of a court as to a controversy between a composer and the Producer shall not limit the power of the Conciliation Committee or Board of Arbitration to decide any related controversy between the Guild and the Producer that may properly be submitted to conciliation hereunder. The Conciliation Committee or Board of Arbitration may, in determining any dispute between the Guild and the Producer properly the subject of conciliation hereunder decide that a Producer or composer has violated the terms of this agreement in any transaction, but such decision shall not give the other party to such transaction any rights against the offending party. Neither the Conciliation Committee nor the Board of Arbitration shall have the power to declare any breach or default with respect to any contract of employment between the Producer and any composer. It is explicitly understood between the parties hereto that, in the event of any breach of the provisions of this agreement by Producer, which may also involve a breach of a contract of employment with one or more composers in the employ of the Producer, the Guild shall not have the right to submit to conciliation or arbitration hereunder any claim or demand of any such composer or composers against the Producer for damages, breach of contract, termination of contract or of any other nature whatsoever either as the agent, trustee, assignee or representative of such composer, or in any other capacity; but in such case the Guild shall nevertheless have the right to submit to conciliation and arbitration the claim of the Guild of a breach of the provisions of this agreement by the Producer, it being understood and agreed that the Guild shall have the right to conciliate and arbitrate a claim of the Guild of a default or breach by the Producer of any of the terms or provisions of this agreement regardless of whether or not such claimed default or breach may also involve a breach by the Producer of a contract of employment with a composer.

It is further acknowledged and agreed that in such circumstances:

(1) The fact that conduct of the Producer which is claimed to be a breach of this collective bargaining agreement shall also be claimed by a composer to constitute a breach of an individual contract of employment between the Producer and such composer, shall not preclude the Guild from seeking and obtaining arbitration hereunder with reference to the dispute between the Producer and the Guild;

(2) The fact that Producer's conduct constitutes a breach of an individual contract of employment shall not preclude the arbitrators from determining that such conduct also constitutes a breach of Producer's obligations under this agreement.

Article 16. Arbitration

In the event of any arbitration hereunder a board of arbitration for the Guild and each Producer, consisting of three (3) members, shall be selected as follows: One arbiter shall be selected by the Guild and one arbiter shall be selected by the Producer. The third arbiter shall be chosen by mutual agreement of the two first selected, failing such agreement, by lot from an authorized list of eligible arbiters. Each Producer signatory hereto may designate its own arbiter or it may designate an arbiter named by any other Producer or Producers signatory hereto. Each party hereto shall designate its arbiter within seven (7) days after written notice of the loss of jurisdiction of the Conciliation Committee over the matter to be submitted to arbitration and the desire of the party serving such notice to submit such matter to arbitration. If either party hereto should fail to select its arbiter within the period above mentioned the other party may, at its option, treat such failure as a repudiation by such party so failing of the

Board's jurisdiction to decide the matter or matters submitted, or may cause an arbiter to be selected for the party so failing, in the manner provided by the Code of Civil Procedure of the State of California. All arbiters may be interested persons but not personally or directly interested in the matter under dispute. The decision of a majority of the arbiters on any subject herein permitted to be arbitrated shall be final and binding upon the parties to such arbitration.

Each party to this agreement shall pay his own costs of any conciliation proceeding and the Board of Arbitration shall have the right to assess the costs of any arbitration proceeding between the parties to such arbitration in such manner or in such proportions as the Board may deem proper, and in the event the Board fails to assess such costs the Producer or Producers party to such arbitration shall bear one-half (1/2) thereof and the Guild shall bear the remaining one-half (1/2) thereof. The Board of Arbitration and any Conciliation Committee above mentioned may make such rules of procedure and conduct their proceedings in such manner as they shall determine to be proper; provided, however, that in any event each party to any conciliation or arbitration shall be afforded a reasonable opportunity to present evidence and argument to the Committee or Board.

All hearings, deliberations and proceedings of the Board of Arbitration and of the Conciliation Committee hereinabove mentioned shall be closed to the public. Only members of the Guild and Producers signatory hereto and their authorized representatives or witnesses called may attend. All communications to and from the Board of Arbitration or the Conciliation Committee shall likewise be absolutely privileged.

The authorized list of arbiters approved by the parties hereto is as follows:

Ben Aaron
Professor Kingsley
Sheldon Elliot

Such list shall be revised by mutual consent from time to time until there are ten names on such list, and may be revised by mutual consent thereafter from time to time.

Article 17. Minimum Compensation

(a) Definition of a qualified composer and song writer:

(1) A qualified composer of underscoring is a composer who has screen credit for one feature length picture or 52 weeks of employment in the motion picture industry, as a composer of underscoring.

(2) A qualified song composer is a composer who has two published songs or who composed two separate songs each of which is completely contained in a motion picture produced and released in the American motion picture industry or who has had 52 weeks of employment in the American motion picture industry as a composer of either or both song music or song lyrics.

(b) Wage Scale Minimum Compensation

(1) There are no minimum compensation requirements with respect to unqualified composers.

(2) The minimum compensation for a qualified Composer for composition only, shall be:

Term contract: $325 per week.
Week to week: $350 per week.

The above salary shall commence and apply when an assignment is made under the Producer's direction and control.

For these purposes, a term contract is a personal service contract for a term of at least ten out of thirteen weeks or any like ratio for a longer period. A week-to-week contract is a personal service contract for a term of less than ten out of thirteen weeks. A composer employed on a weekly basis, may be terminated at any time after one week.

If any composer under a week-to-week or term contract shall render services after the expiration of the period for which his specified compensation is provided in the employment contract and no additional amount is specified for such additional period, then in such event the composer shall receive the weekly rate specified in such contract for each week, or, for purpose only of prorating days worked in a partial workweek, (of less than six (6) days), one-fifth (1/5) for each such a day worked during which the composer shall render such additional services. In any week of employment when the Producer may under this agreement employ the composer for less than one full week (i.e. after one week or after the term of the agreement), if the composer shall render services in composition and also other services not covered by this agreement his minimum compensation for composition shall be prorated in proportion to the amount of time required by Producer for composition.

Any amounts paid to the composer in excess of the minimum compensation, as provided above, may be applied to any other payments required under this agreement.

Article 18. Recognition of Agreement

The Guild agrees that it will take proper steps to provide that its by-laws carry this agreement into effect and that, during the term of this agreement, it will not maintain or adopt any articles or by-laws or any rules or orders which will be in conflict with this agreement. The Guild shall cause its by-laws to provide that each of its members shall be bound by the provisions of this agreement. The Guild represents and warrants that at all times during the term hereof it will have exclusive jurisdiction over the matters and procedure necessary to carry out the purposes and intent of the foregoing provisions of this Article 18 and over all other covenants and agreements to be kept or observed by the Guild pursuant to this agreement. The Producer will not either alone or in concert with any other Producer signatory to a similar agreement with the Guild take any action of any kind that will interfere with the performance of this agreement on the part of the Producer or violate the provisions of this agreement.

Article 19. Agreement Binding Upon Whom

This agreement shall be binding upon the Producer and its subsidiaries in which it has a fifty percent (50%) or more financial interest and all parties who by reason of mergers, consolidations, reorganizations, sale, assignment or the like shall succeed to or become entitled to a substantial part of the business of Producer.

Producer agrees to notify the Guild within seven (7) days after it executes an agreement with any person, firm or corporation (not covered by the provisions of the preceding paragraph) for the use of its studio for the production of a theatrical motion picture. Producer further agrees to notify the Guild within fourteen (14) days after it executes an agreement in the County of Los Angeles, California, with any person, firm or corporation (not covered by the provisions of the preceding paragraph) for the production, distribution or release of a theatrical motion picture where Producer's studio is not used for the production of such picture; such notice to the Guild shall contain the name and address of such person, firm or corporation as well as the name of the person who signed the agreement on behalf of such person, firm or corporation. An inadvertent failure on the part of the Producer to comply with the provisions of this paragraph shall in no event constitute a default by the Producer or a breach of this agreement.

Article 20 Motion Pictures To Which Agreement Not Applicable

It is understood that the provisions of this agreement shall not apply to newsreels, shorts, advertising shorts, trailers, travelogues, commercial films or news or sports commentations.

Article 21. Geographical Application of this Agreement

Notwithstanding anything to the contrary herein contained, it is specifically understood that this agreement shall apply only to composers whose contracts of employment were executed within the continental limits of the United States (excluding Alaska) regardless of the place of performance of services thereunder and shall apply only to such contracts of employment.

Article 22. Minimum Terms

The terms of this agreement for the benefit of the composer are minimum terms; nothing herein contained shall prevent any composer from negotiating and contracting with any Producer for better terms for the benefit of such composer than are herein provided.

Article 23. Producer-Composer Cooperative Committee

Within fifteen (15) days after the execution of this agreement there shall be established a committee to be known as the Producer-Composer Cooperative Committee, composed of not less than sixteen (16) members representative of the Producer and the composer, eight (8) of whom shall be named by the Producer signatories hereto and eight (8) named by the Guild. It is understood that any group of seven (7) or more Producer signatories hereto may establish a separate committee for the purposes hereof, and the Guild will name members to meet with each such committee. Such committee or committees shall meet at least once every sixty days. Deliberations shall be wholly informal and any and all matters affecting the operation and application of this contract, and the promotion of a harmonious Producer-Composer relationship shall be fully and freely discussed. Every effort shall in good faith be made by all members of the committee to prevent abuses from arising under this agreement, to eliminate inequities and to promote cooperation between and mutual understanding of the problems of employer and employee.

Article 24. Jurisdictional Disputes

The Guild agrees to cooperate in good faith with the Producer and with other guilds and organizations representing employees of the Producer in working out a method for the determination of jurisdictional disputes without work stoppages.

Article 25. Pension Plan

Producer and the Guild agree to immediately make application to become parties to, and if accepted, to be bound by the provisions of the "Motion Picture Industry Pension Plan" (hereinafter referred to as the "Pension Plan") made as of October 26, 1953, with respect to to the employees covered hereunder.

In accordance with Article III, sections 2 and 3, of the Pension Plan and subject to the provisions of Article XV of such Pension Plan, relating to private retirement plans, the Producer shall, for the period commencing with June 1, 1960, to and including January 30, 1961 pay into the Pension Plan a total of four dollars and thirty-two cents ($4.32) for each full workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer in such period, under the terms of this agreement, excluding layoffs, suspensions or vacations, or eighty-eight cents (88¢) for each weekday worked or guaranteed in a fractional workweek; the Producer shall, for the period commencing with January 31, 1961, and for the balance of the term of this agreement pay into the Pension Plan a total of six dollars and twenty-one cents ($6.21) for each full workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer on or after January 31, 1961, under the terms of this agreement, excluding layoffs, suspensions or vacations, or one dollar and twenty-seven cents ($1.27) for each weekday worked or guaranteed in a fractional workweek.

In accordance with Article III, sections 4 and 5, of the Pension Plan and subject to the provisions of Article XV of such Pension Plan, relating to private retirement plans, every employee covered by this agreement shall for the period commencing with June 1, 1960, to and including January 31, 1961, pay into the Pension Plan two dollars and seventy cents ($2.70) for each full workweek guaranteed such employee by Producer or for each full workweek such employee works for Producer during such period under the terms of this agreement, excluding layoffs, suspensions or vacations, or fifty-five cents (55¢) for each such weekday worked or guaranteed such employee in a fractional workweek. Every employee covered by this agreement shall, for the period commencing with January 31, 1961, and for the balance of the term of this agreement pay into the Pension Plan three dollars and seventy-eight cents ($3.78) for each full workweek guaranteed such employee by Producer or for each full workweek such employee works for Producer on or after January 31, 1961, under the terms of this agreement, excluding layoffs, suspensions or vacations, or seventy-seven cents (77¢) for each such weekday worked or guaranteed such employee in a fractional workweek. On and after May 21, 1961, Producer shall deduct daily or weekly from the compensation of such employees, as the case may be, the amount of such contribution due from such employee, as above provided, which deduction shall be paid by Producer into the Pension Plan on behalf of such employee as the employee's contribution to the Pension Plan, as herein required.

The above contributions are in accordance with the present pattern of contributions by Employers and Employees required under the Pension Plan. In the event the present pattern of contributions under the Pension Plan should be changed during the term of this agreement, then the rate of contributions as provided herein shall automatically be changed to conform to such new pattern and rate of Employer and Employee contributions established under such Pension Plan.

Such money paid by Producer into the Pension Plan, shall not constitute nor be deemed to be wages due to the individual employee subject to this agreement, nor shall said money paid into the Pension Plan, in any manner be liable for or subject to the debts, contracts, liabilities or torts of such employees.

Producer shall be obligated to make its contribution to the Pension Plan, for any such respective employee, as provided above, only as, if and when such respective employee has contributed to the Pension Plan the amount required from him, as provided above. In the event such employee does not pay to the Pension Plan by June 30, 1961, his contributions due for the period from June 1, 1960, to and including May 20, 1961, then the Producer shall not be liable or obligated to make its respective contribution to the Pension Plan for such employee for such period, as above provided.

Article 26. Industry Pension Plan Retirees Health and Welfare Coverage

Subject to the parties hereto becoming parties to the Industry Pension Plan as provided in Article 25 above, Producer shall pay into the Industry Pension Plan through its Administrator, as Agent for transmittal to the Industry Health and Welfare Fund, the following:

(a) For the period commencing with June 1, 1960, to and including January 31, 1961:

Eighty-one cents (81¢) for each full workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer during such period under the terms of this agreement, excluding layoffs, suspensions, or vacations, or sixteen and one-half (16-1/2¢) cents for each such weekday worked or guaranteed in a fractional workweek.

(b) For the period commencing January 31, 1961, and for the balance of the term of this agreement:

One dollar and eight cents ($1.08) for each full workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer on or after January 31, 1961, under the terms of this agreement, excluding layoffs, suspensions, or vacations, or twenty-two cents (22¢) for each such weekday worked or guaranteed in a fracational workweek.

The above contributions are in accordance with the present pattern of such contributions by employers to the Industry Pension Plan Administrator. In the event the present pattern of such contributions to the Industry Pension Plan should be changed during the term of this agreement, then the rate of contributions as provided herein shall automatically be changed to conform to such new pattern and rate of employer contributions as indicated by such Industry Pension Plan.

The money received by the Administrator of the Industry Pension Plan from such payment, as above provided, shall be kept separate and apart from any funds of the Industry Pension Plan, and shall be paid to the Industry Health and Welfare Fund upon demand by the Health and Welfare Fund. The Health and Welfare Fund shall establish a special reserve fund into which such money shall be placed for the purpose of providing, under proper conditions, for such Health and Welfare coverage as the Trustees of the Health and Welfare Fund may determine to be appropriate for the employees retired under the Industry Pension Plan.

Such money paid by Producer to the Administrator of the Industry Pension Plan for transmittal, shall not constitute nor be deemed to be wages due to the individual employees nor shall said money so paid into the Industry Pension Plan, in any manner, be liable for or subject to the debts, contracts, liabilities, or torts of such employees.

Producer shall be obligated to make such contribution to the Administrator of the Industry Pension Plan for transmittal, for any such respective employee, as provided above, only as, and if such respective employee has contributed to the Industry Pension Plan the amount, and within the time required of him, as provided above in Article 25.

Article 27. Significance of Titles and Sub-Titles

The headings of Articles, sections and other subdivisions hereof are inserted for the purpose of convenient reference, and it is recognized that

they may not adequately or completely describe the contents of the provisions that they head. Such headings shall not be deemed to govern, enlarge, limit, modify or in any other manner affect the scope, meaning or intent of the provisions of this agreement or any part or portion thereof; nor shall they otherwise be given any legal effect.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

PRODUCER

_____

By_____

COMPOSERS AND LYRICISTS GUILD OF AMERICA

By_____

EXHIBIT 20 - 1965 MINIMUM BASIC AGREEMENT -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

(Reproduced herein at pages 273a through 311a)

PRODUCER - COMPOSERS AND LYRICISTS GUILD OF AMERICA
MINIMUM BASIC AGREEMENT OF 1965

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* * *

EXH. NO.
BORAK, REPORTER
6/4/72

PRODUCER - COMPOSERS AND LYRICISTS GUILD OF AMERICA MINIMUM BASIC AGREEMENT OF 1965

THIS AGREEMENT, executed as of this 1st day of January, 1965, by and between COMPOSERS AND LYRICISTS GUILD OF AMERICA, INC., an incorporated association of composers and lyricists, hereinafter referred to as the "Guild," and ___ hereinafter referred to as the "Producer."

W I T N E S S E T H:

Article 1 Definitions

The following terms or words used herein shall have the respective meanings indicated below:

(a) A "composer" is a person who is employed by the Producer for the purpose of composing music and/or lyrics for use in the production of motion picture photoplays.

(b) "Composing" is the act, process or art of creating music or lyrics or both.

(c) "Underscoring" is music composed or used to accompany dramatic action or visual images in motion pictures, but having no significance to the actors and of which the actor is not, as part of the story or plot, aware.

(d) "Song" is (i) the music and lyric of any separate musical composition of which the actors in the motion picture are aware as part of the plot or story, or (ii) the music and lyric of a separate musical composition intended to be heard by the audience.

(e) A "member of the Guild in good standing" shall be a member of the Guild who has tendered the initiation fees and periodic dues uniformly required as a condition of acquiring or retaining membership.

(f) "Motion pictures" means and includes motion pictures whether made on or by film, tape or otherwise and whether produced by means of motion picture cameras, electronic cameras or devices, or any other combination of the foregoing, or by any other methods or devices now used or which may hereafter be adopted.

(g) The term "theatrical motion pictures" (hereinafter also referred to as "motion pictures" or "pictures") as used herein means motion pictures initially released in theatrical exhibition.

(h) The term "television motion pictures" (herein also referred to as "television films") as used herein means and includes motion pictures initially released to free television.

Article 2 Effective Date

The effective date of this agreement is January 1, 1965. The terms and conditions of this agreement shall not apply to individual employment contracts with composers in effect on December 31, 1964, during the term of such contracts, including option extensions thereof, except however that Article 13 herein entitled "Rights Arising From Compositions" shall be applicable as of January 1, 1965, with respect to compositions which would otherwise be subject to this agreement and which are written on and after such date under such contracts.

Article 3 Term of Agreement

The term of this agreement shall commence on January 1, 1965 and shall continue for a period of two (2) years to and including December 31, 1966. The provisions of this agreement shall continue in effect during negotiations for extension or modification of this agreement, which shall commence sixty (60) days after written notice by either party but not prior to November 1, 1966, and the new agreement shall be effective upon and as of a date to be agreed upon during the negotiations.

Article 4 Recognition

(a) This agreement shall apply only to services rendered under employment with Producer. It shall not apply to material purchased or otherwise licensed, nor to independent contractors, or supervisory employees, or to other employees whose participation in writing lyrics or music may be incidental to their bona fide employment in other capacities, provided, however, that if such last mentioned employee, with the knowledge of Producer, on two or more occasions, composes the entire lyrics or entire music of a song hereunder, such employee shall be deemed to be a composer subject to the terms of this agreement, with respect to such services, commencing with the second such occasion.

When a person is under the direction and control of the Producer as to the selection of and the manner and means by which the music for the motion picture is to be composed, he shall not be deemed to be an independent contractor. The conducting of an orchestra, as such, shall not thereby necessarily constitute such person a supervisory employee, for the purpose of this agreement.

It is the policy of the Producer not to utilize the independent contractor form of contract in a manner which would undercut the minimum requirements of the basic agreement. Producer shall send the Guild written notice of each independent contract agreement it makes.

(b) The Producer shall deliver to the Guild once each week a list of the names of composers in Producer's employ at any time during the preceding week, provided that failure on the part of the Producer to furnish any list shall not constitute a default by the Producer or a breach of this agreement, unless the Producer fails to deliver such list within seven (7) days after receiving from the Guild a written request so to do. Inadvertent failure on the part of the Producer to comply with the provisions of this paragraph shall in no event constitute a default by the Producer, or a breach of this agreement.

(c) The Producer recognizes the Guild as the exclusive representative for the purpose of collective bargaining of all composers employed under and subject to this agreement.

Article 5 Guild Shop

(a) During the term of this agreement, each composer employed by the Producer shall be or become a member of the Guild in good standing on or after the 30th day following the beginning of such employment, or the effective date of this article, whichever is later.

For the purpose of this paragraph (a) of this Article 5, the date of the beginning of employment shall be the date of the first employment of such a composer with any member company of the Association of Motion Picture and Television Producers, Inc., who is a signatory to a collective bargaining agreement with the Guild.

The foregoing interpretation of the term "first employment" has been approved in principle by an advisory opinion of the General Counsel of the National Labor Relations Board. If such General Counsel or the local Regional Director of the Board, or the Board or a court of competent jurisdiction shall change such opinion or ruling, then the new ruling or opinion shall prevail until the same is reversed by a court of competent jurisdiction.

(b) The provisions of paragraph (a) of this article shall not apply:

(1) To a composer who is not a member of the Guild at the time of his first employment, and who does not become a member in good standing within the 30 days, as above provided, for the period necessary to permit him to complete the performance of his services in connection with his then current assignment.

(2) To a composer whom the Producer employs as a condition of the sale or license of material.

(3) To a composer employed by reason of special skill or knowledge.

(4) To a composer who on or before the effective date of this article entered into an agreement with Producer and who was not on such date a member of the Guild in good standing, for the full term of such employment agreement including options, renewal periods and extensions exercisable by the Producer.

However, the composers employed by the Producer within exceptions (2) or (3) above, shall not exceed 10% of the total number of composers in the employ of the Producer. For the purpose of such computation, if the Producer has in his employ at any time less than ten (10) compose[illegible] then one of such composers so employed may fall within one of the [illegible]xceptions mentioned in subparagraph (2) or (3) above. Promptly following the employment of any composers claimed by the Producer to be within exceptions (2) or (3) above, the Producer will notify the Guild in writing of the name of the composer employed, the date of the employment agreement and the fact that the Producer claims that such composer is an exception hereunder.

For the purpose of such computation, a composer who is employed under an exclusive contract by a Producer shall be regarded as being employed by the Producer at all times during the term of such contract, including periods during which the composer may be on layoff and periods during which such contract may be suspended by reason of illness or default of the composer or otherwise. The composer shall be regarded as continuing in the employ of the Producer by which he is employed regardless of the fact that his services may be loaned to another Producer.

(c) Promptly after request by any person designated by the Producer, the Guild will admit such person to membership in the Guild upon terms and conditions not more burdensome to such person than those then applicable to other applicants. Membership shall be effective as of the date of such request. Guild agrees that during the term it will not impose any unreasonable initiation fee as a condition to admission to membership, and agrees that during the term hereof it will not impose upon its members any obligation to pay dues that do not uniformly apply to all members of the Guild. It is agreed that the Guild shall not close its membership books or otherwise prevent any person who wishes to become or remain a composer from becoming a member of the Guild, but on the contrary (subject to the provisions hereof relating to waivers as to members suspended or expelled) will make available the privileges of membership to any and all composers employed by the Producer. The Guild will reinstate

or readmit to membership any composer who applies for reinstatement or readmission, after being declared to be not in good standing or after suspension, expulsion, or resignation for any reason whatsoever, provided the composer will apply for such reinstatement or readmission and with such application tender to the Guild unpaid dues permitted by law, and upon such tender the Producer may employ or continue to employ such composer. Instead of readmitting or reinstating such composer, the Guild may at its option grant to the Producer a waiver as to such composer, in which event, for the purpose of determining the Producer's compliance with the provisions of this Article 5, such composer shall not be considered as being employed by the Producer.

(d) If during any time that a composer is employed by the Producer under a contract of employment such composer is or becomes a member of the Guild in good standing and if such composer shall subsequently and before his employment under such contract terminates cease to be a member of the Guild in good standing, then:

(1) If such composer has ceased or shall cease to be a member for any reason other than his failure to pay dues, such composer shall, for the purposes of this agreement, be deemed to remain a member of the Guild in good standing throughout the composer's employment under said contract of employment as the same may be extended or renewed.

(2) If the composer has ceased or shall cease to be a member in good standing by reason of his failure to pay dues, such composer shall, for the purposes of this agreement, be deemed to remain a member in good standing for a period of fifteen (15) days after written notice that he has ceased to be a member in good standing for failure to pay dues from the Guild to both such composer and the Producer, and if, prior to the expiration of said fifteen (15) days period payment of said dues shall be made by the composer or the Producer, then for the purposes of this agreement, such composer shall not lose his status as a member in good standing. To the extent that it may be lawful for the Producer to do so the Producer may require as a condition to employment that any composer execute such written consent or consents as may be necessary so that, if the Producer elects, it may pay to the Guild any dues of any composer and the Producer shall have the right insofar as its obligations to the Guild and to any composer under the terms and provisions of this agreement are concerned, if it elects, to deduct the amount of such dues from any compensation then or thereafter due or to become due to the composer; provided, however, that if either such payment or deduction is or shall become contrary to law or any statute or is declared by any court of competent jurisdiction in the State of California or by any Federal court or the National Labor Relations Board or its General Counsel or by any other Board or individual having jurisdiction over the matter to be in violation of any applicable law or statute, and if by reason thereof Producer fails to deduct and pay to the Guild such dues as aforesaid and shall notify the Guild thereof in writing within the fifteen (15) day period after any notice from the Guild above mentioned, then although such dues are not paid within the fifteen (15) day period, for the purposes of this agreement such composer shall nevertheless be deemed to remain a member of the Guild in good standing throughout the term of the composer's employment as the same may be extended or renewed.

(3) Producer may require that if a composer shall fail or refuse to become or remain a member of the Guild in good standing as above provided, its employment agreement with such composer shall terminate.

(4) If the Producer is required or directed by any decision of a court of competent jurisdiction or any proper governmental authority to refund to any composer, in whatsoever form the same may be recovered, any dues deducted and paid to the Guild by the Producer under the provisions of subparagraph (2) of this paragraph, the Guild agrees to repay to the Producer the amount of such dues so refunded. The Guild will cooperate with the Producer in obtaining the necessary authorizations from composers for the payment and deduction of dues in the manner provided in subparagraph (2) above.

(e) The Guild will facilitate employment of its members by the Producer and will at all reasonable times promptly furnish to the Producer in writing information concerning the status of any of its members, and the Producer shall be entitled to rely upon such information so furnished by the Guild. Promptly after the execution hereof the Producer will furnish to the Guild a list of the composers then employed by it.

(f) The Guild represents and warrants that discipline, resignation, admission, reinstatement, readmission and all other matters relating to membership status will at all times during the term hereof be within the exclusive jurisdiction of the Guild; and the Guild agrees that it will exercise such jurisdiction subject to and in accordance with the provisions and intent of this Article 5 and of any other applicable provisions of this agreement.

(g) It is understood that the provisions of this Article 5 shall never under any circumstances be so construed during the term of this agreement as to constitute or permit what is known as a "closed shop" or construed in any manner that will at any time deprive the Producer of its right to employ or continue the employment of a composer who is not a member of the Guild in good standing, or who does not become a member of the Guild in good standing within the period prescribed in paragraph (a) of this Article 5 if the Producer has reasonable grounds for believing that such a membership was not available to such composer on the same terms and conditions generally applicable to other like members of the Guild, or if the Producer has reasonable grounds for believing that membership in the Guild was denied, deferred, suspended or terminated for reasons other than the failure of such person to tender the applicable initiation fee and/or periodic dues uniformly required as a condition for acquiring or retaining membership in the Guild.

Article 6 <u>Credits for Screen Composition</u>

Credit for composition is to be given for the initial use of the composed music or lyrics, but only in the motion picture for which it was specifically composed and used, subject to the following:

(a) Screen credit for composition for underscoring music, subject to this agreement, shall be given to those who actually compose the music used in the motion picture as follows:

(1) Each composer whose music composed for the picture constitutes more than one-third (1/3) of the total underscoring contained in the final motion picture, which contribution shall be determined in minutes, shall be given screen credit. However, in no event shall Producer be required to give more than two such composers such credit. If one-third (1/3) or more of the total scoring used in the motion picture is by one composer, he is

to receive credit even if the music was previously used, unless such composer does not desire a credit, or it would be a burden on Producer to make such a determination. In any event, credit for any such re-used music need be given by Producer to only one composer. Producer, however, may give credit for composition underscoring to a composer whose music is less than one-third (1/3) of the total underscoring contained in the motion picture.

(2) The form of underscoring screen credit shall be:

Where the composer composed all of the music, or where the composer composed all of the music except that for which credit is specifically given to others, the form of underscoring screen credit shall be "Music by" or "Music Score by" or "Music composed by" or "Music Score Composed by" or words of similar nature. In all other cases where the composer composed less than all of the music and credit is not given to others, the form of credit shall be "Music Scored and Conducted by" or such other credit as may be agreed upon between the composer and Producer.

(3) The Producer shall give to the Guild and composers of the underscoring music (which is subject to credits) used in the final motion picture, notice of credits intended to be used. If no protest, that an appropriate composer has been denied the required credit, is received from them by Producer within 48 hours, excluding Saturdays, Sundays and holidays, after such notice is given, the credits shall be deemed to be final. If any such composer or the Guild should within such time protest to Producer the lack of such required credit, then the question of whether each of the composers concerned composed more than the required one-third (1/3) of the underscoring should be resolved by the composers involved and the Guild, within 96 hours, excluding Saturdays, Sundays and holidays, after such protest is made. Such a determination of the quantity of such composers contribution shall be final as to the parties involved. The authority of the Guild and such composers shall be limited to this sole issue. If no such determination is made by the Guild and the composers within such 96 hours, the credits as submitted by the Producer shall be final. When such credits so become final, there shall be no appeal of any kind from them. The above procedure and conditions shall be the exclusive remedy for determining any dispute arising in connection with credits hereunder for underscoring.

(b) Songs

(1) The form of screen credits for songs shall be:

"New Songs by", or "Song by"; or "Songs by"; or "Original Songs by"; or "Music & Lyrics by", or "Words and Music by"; or "Words by and Music by"; or "Lyrics by and Music by", "Theme by" (for television films), or words of a similar nature, and in addition such other credits as may be agreed upon by the composer and Producer.

(2) The Producer shall give to the Guild and the composers of songs (which are subject to credits) used in the final motion picture, notice of the above credits intended to be used. If no protest, that an appropriate

composer has been denied the required credit, is received within 48 hours, excluding Saturday, Sunday and holidays, after such notice is given, the credits shall be deemed to be final. If any such composer or the Guild should within such time protest to the Producer the lack of the required credit for any such composer, then the question of whether such credit should be given such composer shall be resolved by the composer or composers involved and the Guild, within 96 hours, Saturday, Sunday and holidays excluded, after such protest is made. Such determination of such credit, shall be final and binding as to the parties involved. If no such determination is made by the Guild and the composers within 96 hours, the credits as submitted by the Producer shall be final. When such credits so become final, there shall be no appeal of any kind from them. The above procedure and conditions shall be the exclusive remedy for determining any such dispute arising in connection with such credits for songs.

(c) Notwithstanding the above provisions, Producer may give screen credit for composition to a composer who is not entitled to credit as above provided, if such composer has "box office" value.

Producers shall in good faith, make the determination of whether a composer employed by it has "box office" value, as that term is used and understood in the motion picture industry. If the Guild shall claim an abuse by the Producer, the matter shall be submitted to the Cooperative Committee.

(d) The Producer shall not be limited as to the size or placement of the credit.

(e) With respect to material purchased or otherwise licensed, Producer shall have the unlimited right, as it may see fit, to give or not give screen credit for the composition of music or lyrics in any manner.

(f) If a composer, at the time of his employment or at any time thereafter, states in writing that he is not and never was a member of the Communist Party, and such representation is shown to have been false, or if a composer at any time refuses on request of Producer to make a statement as to whether he is or ever was a member of the Communist Party, of if a composer upon such request states in writing that he is a member of the Communist Party, or if a composer before the House Un-American Activities Committee or any similar duly constituted Congressional or State Legislative or executive committee, has refused to testify as to whether he is or was a member of the Communist Party, or if a composer having been subpoenaed to appear before such a committee fails or refuses to appear in response to such subpoena, the Producer shall be relieved of its obligations to the Guild under this Article 6, and shall also be relieved of any obligations to accord credit to the composer under his employment agreement.

The Producer, however, shall not be relieved of its obligation to give such credit by reason of any act or failure to act, on the part of the composer, described in the preceding sentence, if prior to the composer's employment by the Producer (i) such act or failure to act by such composer had occurred and (ii) such occurrence was known to the Producer.

Article 7 . Cue Sheets

Producer shall prepare for each motion picture a music cue sheet designating the composer of each cue and every part thereof indicating the nature and duration of its use in such motion picture. The cue sheet may also indicate any other information desired by Producer. Producer shall furnish one copy of the cue sheet to the

Guild. If no protest is made to the Producer by the composer or the Guild within 10 days after receipt by the Guild, the composer and the Guild shall be deemed to have waived any breach of this article; but if a protest is so made the Producer shall correct the cue sheet if Producer agrees it is erroneous or shall refer the protest to the Conciliation Committee for determination, but such protest shall not be subject to arbitration. An inadvertent failure by the Producer under any provisions of this article shall not be considered a breach of this agreement.

Article 8 Force Majeure

Suspension of payment of salary permitted by the so-called "force majeure" clause of employment agreements with composers shall be limited with respect to each continuous cause of suspension, as follows:

(a) Composers receiving the minimum compensation, may be suspended for 6 weeks without salary.

(b) Composers receiving above the minimum, but less than $1,000 per week may be suspended for 8 weeks without salary.

(c) As to composers receiving $1,000 per week or more, the matter of suspension of services and reduction of compensation shall be subject to individual negotiations between the Producer and the composer.

Article 9 Delivery of Contracts

Producer agrees that from and after the effective date hereof, upon the employment of any composer, such composer shall be tendered, within a reasonable length of time a written contract setting forth the terms of employment subject to this agreement. Within two weeks after such written employment contract has been fully signed, a copy thereof shall be delivered to the composer and a copy to the Guild, and if both of such copies are not executed by the Producer, the copy not so executed shall be accurately conformed by an officer or employee of the Producer, who shall place upon any such conformed copy his signature or initials in form sufficient to identify such officer or employee.

Article 10 Individual Contracts

This agreement applies to and is incorporated into the provisions of each individual contract between the employer and a composer with respect to services subject to this agreement, and such individual contract shall contain a statement to such effect.

Article 11 Copies of Independent Contractor Agreements

When a dispute arises hereunder between the Producer and the Guild concerning any independent contractor agreement, the Producer, upon the Guild's request, will make available to the Guild, a copy of such agreement, for the purpose of determining its status.

Article 12 Speculative Composition

The Producer and the Guild agree that there shall be no speculative composition, nor shall either party condone it as a practice.

The Producer and the Guild recognize that there is possibly an area wherein the proper and constructive exchange of ideas and criticism between a composer and a Producer may be claimed by the Guild to be speculative composition. Whenever the Guild feels that speculative composition has occurred, the case will be referred to conciliation and arbitration and the Producer's intent as determined by the facts shall be an important factor in the consideration.

The Producer will not agree with any composer that the composer shall write on speculation or that payment shall be contingent upon the acceptance or approval of the Producer, except that this does not limit the submission of original composition or prevent the Producer from discussing with any composer any ideas suggested by such composer, or discussing with any composer any ideas or any material suggested by the Producer in order to determine the composer's thoughts and reactions with respect to any such idea or other material for the treatment or development thereof. Without in any way limiting the free exchange of ideas and constructive suggestions in connection with the submission of material by a composer to the Producer, and without limiting the composer's right to revise the material as a result of such exchange of ideas, the Producer and the composer will not, in the absence of a contractual relationship, engage in revising such material under continuous direction and supervision by the Producer.

It is understood that if a Producer enters into an agreement with any person who undertakes to compose material on an Independent Contract or similar basis and the Producer pays such person a separate consideration and receives therefor an option or right of first refusal to acquire the Motion Picture or other rights in such material when completed, neither such agreement, nor the consummation thereof by the acquisition of such rights shall constitute a violation of the provisions of this Article 12.

Article 13 Rights Arising From Composition

(a) As used in this Article 13, the following terms shall have the following meanings:

"Composition" means any and all music and lyrics written, composed, submitted, added, improvised, interpolated or invented by the Composer in the course of his employment by the Producer.

"Society" means any performing rights society, or other collection agency or organization, which, either directly or through affiliates, maintains a regular system of collecting fees from the users of compositions for the privilege of performing the same in public for profit, for the benefit of both composer-members and publisher-members, and which divides its aggregate net collections of such fees equally between its publisher-members and composer-members, or which has agreed in writing to divide its net collections with respect to performances of the compositions involved equally between the composer and the publisher, hereinafter referred to.

"Performing Rights" means those public performing rights which are, from time to time, as a practical matter, administered and controlled by the Society involved.

(b) The Producer, as employer for hire of the composer, is entitled to and shall own all rights of every kind and character, without any restriction, limitation or reservation whatsoever, in and to the compositions, and the copyrights therein, and any and all renewals and extensions of such copyrights everywhere in the world, specifically including the copyrights and all renewals and extensions thereof in the United States. Without limiting the generality of the foregoing, it is specifically understood and agreed that included in the ownership of all rights of the Producer in and to the compositions is the specific and irrevocable right under any and all circumstances, in perpetuity, to perform publicly for profit, or otherwise, and to authorize others so to do (by any and all present and future methods and means of public performance, whether or not now known or contemplated) the compositions, or any part or parts thereof, throughout the world. Such rights include, but are not limited to, the Performing Rights, as hereinabove defined.

(c) In order to assure the composer of participation in the revenue which may be derived from performances of the compositions, Producer agrees that in the event the composer is, on the date of his employment by Producer, a member or licensee of a Society, Producer will, and it does hereby, transfer and assign the world-wide Performing Rights (as hereinabove defined) in and to the compositions to the composer and a publisher of Producer's choice, which publisher may, but need not, be a subsidiary or affiliate of Producer, but which publisher shall be a member or licensor of the same Society, or of an affiliate of the same Society, as the composer. Notwithstanding anything herein contained, however, there is hereby excepted and reserved from said transfer and assignment the non-exclusive right to perform the compositions in any and all situations, throughout the world, where it is, or may from time to time be, unlawful for the Society, or any of its affiliated bodies to collect performance-fees, or where the Society, or any of its affiliated bodies, does not, from time to time, for any reason whatsoever, actually maintain a regular system of collecting performance fees. In any and all such situations, the Producer may authorize the performance of the compositions in and as a part of the motion picture in which they are included and trailers thereof, or otherwise, without payment of any performance fees whatsoever to the composer, or to the Society, or to the publisher or anyone else.

(d) The Producer has agreed to and does hereby transfer and assign the Performing Rights, as set forth in paragraph (c) above, only conditioned upon and subject to the following:

(1) That the motion pictures (including trailers) and copies thereof containing the compositions may be exhibited at any place in respect of which there is subsisting a valid license granted by the Society or by one of its affiliated bodies (as the case may be).

(2) That no such license shall be required for performing the compositions:

(i) for the purpose of reproducing the same in synchronism or timed relation with the motion pictures and copies thereof during the production thereof;

(ii) in any of the situations referred to in paragraph (c) hereof with respect to which Producer reserves the non-exclusive right to perform the compositions.

(3) That if the proprietor or licensee of any place capable of being licensed by the Society or one of its affiliated bodies fails or neglects to hold a license, as aforesaid, the right of the Society, or of the affiliated body concerned, shall be against such person exclusively.

(4) That, under no circumstances, shall the Society, or any of its affiliated bodies, or the composer or any successor in interest of the composer, or the publisher have the right to take any proceedings in respect of any unlicensed performance that would have the effect of enjoining and/or preventing and/or otherwise interfering with the public performance anywhere in the world and by any means or method now or hereafter known of the motion pictures or any portion thereof or any trailer thereof with the compositions included therein, nor shall the Producer or the publisher be liable to the composer for any action that the Society or any of its affiliated bodies may or may not take in administering the Performing Rights or for any payments that the Society may or may not make to the composer.

(5) That the compositions need not be published as a condition of the payment of the publisher's share of performance fees.

(6) That neither the Producer nor the distributor nor the publisher shall, under any circumstances, be liable to the composer or his successors in interest, or to the Society or its affiliated bodies, nor shall the Producer or the distributor be liable to the publisher, for any payment of any sums by reason of performance of the compositions as contained in the motion pictures, or otherwise.

(7) That under no circumstances shall the composer or his heirs, executors, administrators or other personal representatives, agents or assigns have the independent right to license performances of the compositions as included in the motion pictures or trailers thereof, or to otherwise interfere in any way with the distribution and exhibition of such motion pictures containing the compositions.

(8) That if, after the transfer and assignment referred to in paragraph (c) hereof, the composer should resign from or cease to be a member or licensor of the Society, the Performing Rights in and to the compositions involved shall, nevertheless, continue to be controlled and administered by the Society so long as the publisher remains a member of said Society, that if, after said transfer and assignment, the publisher should resign from, or cease to be a member or licensor of the Society or an affiliate of the Society, the Performing Rights in and to the compositions involved shall, nevertheless, continue to be controlled and administered by the Society so long as the composer remains a member of said Society; and that if, after said transfer and assignment, both the composer and the Publisher shall no longer be members or licensors of the Society or the Society should cease to exist or function, then the Performing Rights in and to the compositions involved shall revert to the Producer.

Notwithstanding the transfer and assignment referred to in paragraph (c) hereof, it is agreed that the Publisher shall always have the right to transfer the Performing Rights acquired by it pursuant thereto to another publisher which is a member of the same Society, and the Producer shall always have the right to cause the Performing Rights to be transferred to another publisher which is a member of the same Society.

(9) That for the purpose of protecting the motion picture in which any composition is used or to be used, the Producer or the Publisher shall always have the right to impose restrictions upon the performance of such composition apart from such motion picture.

Article 14 No Strike Clause

The Guild agrees that during the term hereof it will not call or engage in any strike, slowdown or stoppage of work affecting motion picture production against the Producer.

The kind of strike referred to hereinafter in this paragraph is a strike called, either (a) pursuant to the written vote therefor of 66⅔ of the votes of active members of the Guild voting on the question at a meeting (called on at least two (2) days advance written notice of the taking of a strike vote) or, in a mail vote; or (b) with the written assent of 66⅔ of the active members of the Guild without a meeting or mail vote.

If, after the expiration or other termination of the term of this contract, the Guild shall call a strike against any producer, then each respective then current employment contract of composer members of the Guild (hereinafter for convenience referred to as "members") with such Producer shall be deemed automatically suspended, both as to service and compensation, while such strike is in effect, and each such member of the Guild shall incur no liability for breach of his respective employment contract by respecting such strike call, provided such member shall promptly, upon the termination of such strike, and on the demand of the Producer, perform as hereinafter in this paragraph provided, and the member shall be deemed to have agreed as follows:

(a) That if the composer has been assigned to the composition of the music or lyric for a motion picture at the time any such strike is commenced, he will, after the termination of such strike and upon the request of the Producer, report to the Producer and perform his services in the completion of such assignment at the same salary and upon the same terms and conditions as were agreed upon prior to the commencement of said strike.

(b) That he will immediately, after the termination of such strike and upon the request of the Producer, execute a new contract on the same terms and conditions, and at the same salary or other compensation as provided in the employment contract which was in effect at the time the strike commenced, except that such new contract shall be for a period or periods, including options, equivalent to the unexpired term of the contract which was in effect when such strike was commenced.

(c) That he will, in lieu of (b), after the termination of such strike, at the option of the Producer, and upon its demand, execute an agreement in writing with the Producer extending the term or period of such personal service contract in effect when such strike was commenced for a period of time equal to the period of any suspension by such strike.

If the member shall fail to perform the foregoing, or if he shall fail actually to finish his services in the assignment mentioned in (a), as provided in (a) (except by reason of his death, physical disability or default by the Producer), then the waiver of liability by the Producer heretofore given shall be null and void.

The member further agrees that the statute of limitations as a defense to any action by the Producer against the member for his failure to perform during such strike is extended by a period equivalent to the duration of such strike and the period of the strike shall not be considered a period of laches. If the member asserts any claim or defense by reason of the expiration of time during which he can be required to perform services by virtue of any statute (such as the seven year statute) which claim or defense is based in whole or in part on the lapse of time during such strike, the waiver by the Producer is ineffective thereupon, and the statute of limitations as to the Producer's rights is waived by the member automatically.

The automatic suspension provisions of this paragraph shall not affect the Producer's right to sue any individual composer for breach of contract arising during the period of such strike, unless such composer shall have complied with his obligations under the provisions of this paragraph. Nothing herein contained shall be construed to deprive the Producer of its right to terminate the employment contract at any time after such member shall strike or otherwise fail or refuse to perform services.

The provisions of this paragraph shall be deemed included in all employment contracts between composers and Producer which are now in effect and all such employment contracts which shall be entered into during the effective term of this collective bargaining agreement.

The Guild agrees that it will take such affirmative action as may be necessary and lawful in order to require its members to perform their respective obligations under the provisions of this paragraph.

Notwithstanding the expiration or other termination of the term of this collective bargaining agreement, by termination or otherwise, the provisions of this paragraph shall be and remain in full force and effect for a period of seven (7) years following the termination of any such strike, unless this covenant be sooner terminated by the written consent of Producer and Guild.

The Guild is a corporation. Neither the Guild nor any officer, agent, director or member of the Guild shall be liable for any strike, slowdown or work stoppage, unless the same be authorized by the Guild in accordance with its by-laws. However, any officer, agent, director or member who affirmatively participates in, procures or induces the strike, slowdown or work stoppage, contrary to the terms of this agreement, shall not be immunized from liability by reason of the provisions of this article. Provided further that the foregoing exemption of the first sentence above shall not apply unless the Guild upon request from the Producer affected thereby shall proclaim promptly and publicly that such strike, slowdown, or work stoppage, is unauthorized, and follows such pronouncement within a reasonable time thereafter, if requested so to do by the Producer affected, with disciplinary proceedings in accordance with its by-laws against the participants in such unauthorized action.

Producer agrees it will not call or engage in any lockout of members, during the term of this agreement.

Article 15 Location Expenses

If a composer is required by the Producer to perform services on any location sufficiently far away from the Producer's studio so that overnight accommodations are reasonably necessary, the Producer shall furnish and pay for the reasonable board and lodging of the composer while required to remain on any such location, and agrees to furnish for the composer first-class transportation, if available, to and from any such location, it being understood that such first-class transportation need not include a drawing room or compartment or passage on any so-called "extra fare" train, and the Producer may in any contract of employment between the Producer and a composer designate a reasonable daily maximum liability on the part of the Producer for such board and lodging of the composer.

In addition, Producer shall furnish at such location a musical instrument and such mechanical reproducing and playback instruments as may be necessary or required in connection with his composition.

Article 16 Flight Insurance

Producer will provide a minimum coverage of $20,000 flight insurance for each composer who travels by airplane, at the direction of the Producer, during his employment. Composer shall be permitted to fill out a form specifying a beneficiary. Such form shall be filed with the designated representative of the Producer.

Article 17 Conciliation Committee

(a) Each Producer and the Guild will set up a Permanent Conciliation Committee consisting of six (6) members selected as follows:

(1) The Guild will promptly designate three (3) members in good standing and as soon as so designated, and in no event later than fifteen (15) days after the execution of this agreement, will in writing notify

the Producer for which such Committee is organized of the names of the designees. The Guild may designate separate representatives for each Producer signatory, but need not do so.

(2) Each Producer will promptly designate three (3) representatives and as soon as so designated, and in no event later than fifteen (15) days after the execution of this agreement, will in writing notify the Guild thereof. Each Producer signatory hereto may designate its own separate representatives or it may designate those named by any other Producer or Producers signatory hereto. If Producer is a member of the Association of Motion Picture and Television Producers, Inc., such representatives may be appointed by said Association.

(3) The Producer and the Guild may, from time to time, make substitutions for any of their representatives by notice to the other.

(b) The Conciliation Committee will be maintained at all times during the term of this agreement. Promptly after the Committee has been constituted it shall select a chairman and vice-chairman whose terms of office shall be eighteen (18) months. During the first eighteen (18) months of the term hereof the chairman and vice-chairman of the Committee shall be representatives of the Guild and during the second eighteen (18) months of the term hereof the chairman and vice-chairman shall be representatives of the Producer. In the absence of the chairman, the vice-chairman shall act in his stead.

(c) All meetings of the Conciliation Committee and of the Board of Arbitration referred to in Article 18, shall be held in Los Angeles, California; provided, however, that the same shall be held in New York City, New York, if the difference or dispute in question arises out of the composer's performance in New York on a television program series regularly produced in New York and grievance procedure is commenced while such series continues to be produced in New York.

Article 18 Conciliation and Arbitration Procedure

(a) Steps:

Step One - Prior to submitting to conciliation and arbitration any matter properly a subject of conciliation and arbitration hereunder, an authorized representative of the Guild and an authorized representative of the Producer will in good faith attempt to settle and adjust the difference or dispute. If such representatives fail to settle or adjust the difference or dispute within seven (7) days after the matter was first brought to the attention of the party not making the claim, either party may take the matter to conciliation under Step Two by serving written notice thereof containing a statement of all matters to be submitted to the Conciliation Committee upon the other party and the chairman of said Committee.

Step Two - Conciliation: The chairman of the Conciliation Committee shall within forty-eight (48) hours (excluding Saturdays, Sundays, and the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas) after receipt of the written notice referred to in Step One, call a meeting of the Committee by written notice served upon each of its members with a copy of the notice served by the party demanding conciliation attached thereto.

The chairman shall call said meeting for a date no later than fifteen (15) days after the date of call. The Committee shall meet on the date called unless such date is continued by action of the chairman and one other member of the Committee who is a representative of the other appointing party and shall consider and act upon all matters properly submitted to it and shall not consider or act upon any unrelated matter. If a decision permitted hereunder is concurred in by any four (4) members of the Committee, the same shall be the decision of the Committee and shall be final and binding upon the parties to the proceeding, and any interpretation of this agreement made in such decision shall also be binding on the composer or composers involved. The decision of the Committee may include any appropriate award permitted hereunder including damages, subject to the limitations set forth in Article 19. If the Committee shall fail to meet and commence hearings or deliberation upon any matter submitted to it upon the date designated as above provided for such meeting or within a period of fifteen (15) days from the time of such call, whichever is the later, or if four (4) members of the Committee shall fail to concur in a decision within fifteen (15) days after first hearing unless otherwise mutually agreed upon, or if hearing is waived by both parties hereto, or in any event if such dispute is not settled by the Committee within thirty (30) days after receipt by the Chairman of the submission referred to in Step One, then either party hereto may, subject to the provisions of Articles 18 and 19 hereof, submit such matter to arbitration. Such submission shall be made by written notice, requesting such arbitration, delivered to the other party hereto, and in such event arbitration thereof shall be had in the manner and to the extent provided by Articles 18 and 19 hereinafter set forth.

Step Three - Arbitration:

(i) The party seeking arbitration shall set forth in its notice the particulars of its claim and advise the other party of the identity of its arbitrator selected by it. Within seven (7) days thereafter the other party shall designate its own arbitrator. The two (2) arbitrators so selected shall mutually agree upon a third arbitrator and failing to do so within seven (7) days after designation of the second arbitrator, the third arbitrator shall thereupon be chosen by lot from the authorized list of arbitrators provided for herein. If the party upon which the demand for arbitration is served fails to select its arbitrator within the time limit provided herein, the other party may cause an arbitrator to be appointed for such party in the manner provided by the Code of Civil Procedure of the State of California and may seek to compel arbitration, or may proceed upon its claims in their entirety in a court of law or equity, as it desires. If the party upon which the demand for arbitration is served asserts that the controversy or any part thereof is not arbitrable, or that the Board of Arbitrators has no jurisdiction of the controversy or any part thereof, or fails to participate in the arbitration, the other party may seek to compel arbitration, or may proceed upon its claims in their entirety in a court of law or equity, as it desires. If the Board rules it has no jurisdiction over the dispute, then each party is relieved of its obligation to further delay taking any action at law or in equity which it may desire to take.

Nothing herein contained shall be deemed to preclude a party asserting an issue of non-arbitrability or lack of jurisdiction from obtaining determination by a court of such issue under applicable law.

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(ii) Except as otherwise provided in this agreement a majority of the three (3) arbitrators, or by consent of the parties hereto, the third arbitrator acting alone may make any appropriate award, permitted hereunder, including damages, subject to the limitations set forth in Article 19, and such award shall be final and binding upon the parties to the proceeding, and any interpretation of this agreement made in such award shall also be binding on the composer or composers involved.

(iii) All arbitrators selected by the parties hereto may be interested persons but not personally or directly interested in the matter in dispute. The third arbitrator shall be a disinterested person.

(iv) If an arbitrator cannot serve, a substitute shall be selected in accordance with the provisions of (i) above.

(b) Hearing Procedure:

The Conciliation Committee and the Board of Arbitration shall adopt such rules of procedure and conduct their proceedings in such manner as they shall determine to be proper provided, however, that in any event each party to any conciliation or arbitration shall be afforded a reasonable opportunity to present evidence and argument to the Committee or the Board, as the case may be.

All hearings, deliberations and proceedings of the Board of Arbitration and the Conciliation Committee hereinabove mentioned shall be closed to the public and shall be absolutely privileged. Only members of the Guild and Producers signatory hereto and their authorized representatives or witnesses called may attend. All communications to and from the Board of Arbitration or the Conciliation Committee shall likewise be absolutely privileged.

The authorized list of arbitrators approved by the parties hereto is as follows:

Ben Aaron	Dean Richard Maxwell
Seymour Bricker	Addison Mueller
Arthur Carstens	Spencer Pollard
Dean Orrin D. Evans	Thomas T. Roberts
Sidney Justin	Murray Schwartz

Such list shall be revised by mutual consent from time to time.

(c) Time Limits:

(1) Proceedings under this Article 18 shall be commenced no later than eighteen (18) months after the grieving party has obtained knowledge of the facts upon which the claim is based.

(2) If proceedings under this Article 18 are not commenced within the time period specified in (1), such grievance shall be deemed to be waived. All time limits provided in this article may be extended by mutual written agreement of the parties to the difference or dispute.

(d) Costs.

Each party shall pay the costs of its members of the Conciliation Committee and the Board of Arbitration. The fees and expenses of the third arbitrator (unless otherwise provided by the Board) and the cost of a court reporter or a transcript (if ordered by the arbitrator), shall be shared equally. All other costs and expenses of conciliation or arbitration shall be borne by the party incurring the same.

(e) Award:

The award of the Committee and the Board of Arbitration (or, if agreed to by the parties, of the third impartial arbitrator) shall be in writing and shall be limited in subject matter and remedies as provided in this agreement.

(f) Parties:

In any conciliation or arbitration hereunder only the Producer and the Guild shall be parties except that in any conciliation or arbitration pursuant to subsection (a) (3) of Article 19 the Guild and the composer or composers involved shall be jointly a party, and may be represented by joint counsel.

Article 19 Matters Subject to Conciliation and Arbitration

(a) Except as otherwise provided in this Article 19, the following matters shall be submitted to conciliation and thereafter to arbitration as herein provided, and no other matters may be submitted to conciliation or arbitration:

(1) Any difference or controversy between the Guild and the Producer concerning the interpretation of any of the terms of this agreement and the application and effect of such terms as determined by an interpretation thereof;

(2) Any alleged default or breach of any of the terms or provisions of this agreement by the Guild or Producer, except that violations of credit provisions, to the extent they are arbitrable, shall be subject to the following conditions and limitations:

If the Committee decides or the Board awards that any such credit provision has been violated the Committee or Board shall have jurisdiction only to make a prospective decision or award and shall have no jurisdiction to award damages, penalties, or any monetary amount, or to require the Producer to change or redo any film titles. No award in any conciliation or arbitration determining a question as to credits shall affect or be used or be admissible in any other action or proceeding of any nature whatsoever, but any court of competent jurisdiction may confirm, set aside or modify any conciliation or arbitration award hereunder in any proceeding brought for such purpose in accordance with applicable law.

(3) Any claim by the Guild and a composer or composers on the one hand against the Producer on the other hand for unpaid compensation (hereinafter referred to as "salary") under the composer's or composers' individual employment agreement with the Producer, excluding, however, any claim not related to his or their employment as a composer or composers and subject to the following conditions and limitations:

(i) Conciliation and arbitration proceedings shall be initiated by the Guild on behalf of the composer. The Conciliation Committee and Arbitration Board shall not have jurisdiction to consider any unpaid salary claim which exceeds a sum equal to double the minimum rates provided in Article 20.

If the unpaid salary claim exceeds said sum, said claim may nevertheless be submitted to conciliation and arbitration, but by such submission the Guild and the composer whose claim is involved thereby shall waive and shall have no further claim or right with respect to any amount by which the unpaid salary involved exceeds the sum of double minimum, provided, however, that nothing contained in this sentence shall be construed to constitute a waiver of any rights under Article 18 (c) (i).

(ii) Claims for unpaid salary hereunder cannot be split and the double minimum rates limitation cannot be avoided by commencing more than one (1) separate conciliation or arbitration proceeding with respect to unpaid salary.

(iii) In any conciliation or arbitration proceeding with respect to a claim for unpaid salary, the Producer may, but need not, assert any and all defenses, counterclaims and set-offs, including any defenses based on a claim of suspension or termination. In any arbitration proceeding with respect to a claim for unpaid salary, the Producer shall assert any and all counterclaims and set-offs relating to the same salary dispute; provided, however, that if the amounts claimed by the Producer in the conciliation or arbitration exceed the sum of double minimum rates the Producer shall have the option of submitting all such counterclaims or set-offs to conciliation and (whether or not submitted to conciliation) to arbitration or to institute an action at law or in equity with respect to such counterclaims or set-offs. Nothing contained in this paragraph shall be construed to constitute a waiver of any rights or obligations under Article 18 (c)(i). Producer's rights and obligations to raise defenses, counterclaims and set-offs shall be subject to the provisions of subsection (a) (4) of this Article 19.

The institution of any such action by the Producer shall not stay any arbitration proceeding brought by the Guild and composer for unpaid salary as above provided, nor shall any such conciliation or arbitration proceeding stay any action instituted by the Producer upon any matter Producer is not required to submit in arbitration as a set-off or counterclaim, whether or not such action is instituted prior to the submission by the composer of the unpaid salary claim to conciliation and arbitration.

(iv) If the claim for unpaid salary arises out of services rendered by a composer in connection with one (1) or more but not all of the motion pictures in connection with which the composer is to render services under his individual employment agreement, the Committee and Board shall have no jurisdiction to determine or affect any claim or claims relating to any services in connection with any motion pictures other than the motion picture or motion pictures as to which the unpaid salary claim is asserted unless a defense, set-off or counterclaim is asserted with respect to such other motion picture or motion pictures.

(v) Any decision made or award rendered in conciliation or arbitration pursuant to this subsection (3) shall insofar as any payment of money is concerned, be limited to deciding or awarding what amount, if any, is due the composer from the Producer on account of unpaid salary, to the limit specified, and what amount, if any, is due the Producer from the composer on account of any set-off or counterclaim asserted by the Producer in such conciliation or arbitration.

(vi) If a claim for unpaid salary under an individual employment agreement is submitted to conciliation or arbitration, any claim of a breach or default of this agreement arising out of or connected with said claim for unpaid salary must be submitted for conciliation and arbitration together with the claim for unpaid salary, and failure to so submit such claim shall constitute a waiver of any and all rights to assert such claim thereafter.

(4) Except as hereinabove in Article 18 (a) and subsection (a) (3) of this Article 19 provided, it is expressly understood and agreed that there is to be no conciliation or arbitration of any individual disputes between the Producer and any composer and that no determination or decision made by the Conciliation Committee or by arbitration, as herein provided, shall affect the rights of the Producer as against any composer nor the rights of any composer as against any Producer, but shall only control and be binding upon the Producer and the Guild in relation to their rights as against each other. Controversies under individual employment agreements involving (i) Producer's rights of suspension and termination, (ii) Producer's right to seek or obtain injunctive relief or specific performance, (iii) any of the warranties or grants of rights made by the composer under such individual employment contract, or (iv) any of the rights of the Producer to any literary or musical material, shall not be subject to conciliation or arbitration and any decision in conciliation or award in arbitration purporting to determine or affect any of the aforementioned matters shall, to that extent, be of no force or effect whatsoever, provided, however, that if the Producer asserts in any conciliation or arbitration any defense, counter-claim or set-off involving or based upon any claim of suspension or termination, the same shall be determined in such conciliation or arbitration proceeding.

(5) The Conciliation Committee and the Board of Arbitration shall have jurisdiction to determine only such claims or controversies as are submitted for conciliation or arbitration in accordance with Article 18 hereof, subject to the limitations upon the powers of said Committee and Board under this Article 19. Neither the Committee nor the Board shall have the power or the authority to reform, amend or extend the express terms and provisions of this agreement or to reform, amend or extend the express terms and provisions of any individual employment agreement between the Producer and any composer.

(b) Court Proceedings

(1) Nothing contained in this agreement shall limit the rights of the Guild or of any composer to assert any and all appropriate legal and equitable rights and remedies to which the Guild or such composer is entitled in courts of competent jurisdiction with respect to breaches of Article 6 of this agreement for composing credit, subject, however, to the following conditions and limitations with respect to the Guild:

(i) If the Guild commences any action or proceeding in court with respect to any such alleged breach prior to the submission of the matter to conciliation or arbitration hereunder, then the Guild may not submit such matter to conciliation or arbitration and neither the Committee nor the Board shall have any jurisdiction to consider the alleged breach of such credit provision.

(ii) If the Guild commences any action or proceeding in court with respect to any such alleged breach after the submission of the matter to conciliation or arbitration hereunder, then the only right and remedy which the Guild shall have available to it in any such court action or proceeding shall be a recovery of such damages as the Guild may have suffered by reason of such breach. In such event, the conciliation or arbitration and the action or proceeding in court may both proceed at the same time.

(iii) Any such court action or proceeding with respect to such grievance must be commenced by the Guild, if at all, within the eighteen (18) month time period specified in Article 18 (c) hereof.

(2) With respect to unpaid salary claims which are then arbitrable pursuant to the provisions of this agreement, the composer, at his option, need not proceed by conciliation and arbitration but instead may proceed to institute an action at law or equity with respect to such claims prior to a decision in conciliation or the submission of such claim to arbitration. Provided, however, that nothing contained in this paragraph shall be construed to constitute a waiver of any rights under Article 18(a)(i).

(3) Nothing contained in this agreement shall impair or affect or limit the right of the Producer, the Guild or any composer covered by this agreement to assert and exercise any and all appropriate legal or equitable rights or remedies to which such Producer, Guild or composer is entitled in any court of competent jurisdiction as to any matter which is not made subject to conciliation and arbitration pursuant to this Article 19. Nor shall anything contained in this agreement in any way affect the right of the Producer to seek or obtain injunctive relief or specific performance with respect to any individual employment agreement with a composer, or in any way affect any rights of the Producer with respect to the warranties and grants of right made by a composer under an individual employment agreement, or in any way affect the Producer's right to suspend or terminate a composer under an individual employment agreement, except as provided in Paragraph (a)(4) above.

(4) Nothing herein contained, however, shall preclude any court of competent jurisdiction from confirming, setting aside or modifying any conciliation or arbitration award hereunder in any proceeding brought for any such purpose in accordance with applicable law. The Guild shall have the right to conciliate and arbitrate a claim of the Guild of a default or breach by the Producer of any of the terms or provisions of this agreement, including a failure to pay minimum compensation, regardless of whether or not such claimed default or breach may also involve a breach by the Producer of a contract of employment, and such proceeding shall not affect the right of the composer to pursue his own remedies at law or in equity, except as limited by the provisions of this agreement.

Article 20 Minimum Compensation

(a) Definition of a qualified composer and song writer:

(1) A qualified composer of underscoring is a composer who has screen credit for one feature length picture, three one-half (1/2) hour or one one-hour (1) or more in length television motion picture, or 52 weeks of employment in the motion picture industry, as a composer of underscoring.

(2) A qualified song composer is a composer who has two published songs or who composed two separate songs each of which is completely contained in a motion picture produced and released in the American motion picture industry or who has had 52 weeks of employment in the American motion picture industry as a composer of either or both song music or song lyrics.

(b) Wage Scale Minimum Compensation:

(1) There are no minimum compensation requirements with respect to unqualified composers.

(2) The minimum compensation per week for a qualified composer for composition only, shall be:

	Television Motion Pictures	Theatrical Motion Pictures
Term contract:	$325.00	$357.50
Week to week:	$350.00	$385.00

The above salary shall commence and apply when an assignment is made under the Producer's direction and control. The above television weekly rate shall apply in term or week-to-week employment in any week in which no work hereunder is performed in a theatrical motion picture; in any week in which such work is performed in both theatrical and television motion pictures the theatrical motion picture rate will apply for that week. For these purposes, a term contract is a personal service contract for a term of at least ten out of thirteen weeks or any like ratio for a longer period. A week-to-week contract is a personal service contract for a a term of less than ten out of thirteen weeks. A composer employed on a weekly basis, may be terminated at any time after one week.

If any composer under a week-to-week or term contract shall render services after the expiration of the period for which his specified compensation is provided in the employment contract and no additional

amount is specified for such additional period, then in such event the composer shall receive the weekly rate specified in such contract for each week, or, for purpose only of prorating days worked in a partial workweek (of less than six (6) days), one-fifth (1/5) for each such a day worked during which the composer shall render such additional services. In any week of employment when the Producer may under this agreement employ the composer for less than one full week (i.e. after one week or after the term of the agreement), if the composer shall render services in composition and also other services not covered by this agreement his minimum compensation for composition shall be prorated in proportion to the amount of time required by Producer for composition.

(3) In the alternative, when the employment for composition, excluding songs, is for television films only, and it is non-exclusive employment, the minimum compensation shall be:

a) Not less than $175 for a half-hour show.
b) Not less than $350 for a one-hour show.
c) Not less than $500 for a one and one-half hour show.
d) Not less than $20 per minute for a five-minute or less fragment, with minimum guarantee of not less than three minutes ($60).

The above rates of $175 for a half-hour show and $350 for an hour show shall be applicable where more than five minutes of new music is composed for a program.

Where more than five minutes of new music is composed and more than one composer is employed, the combined payments to such composers shall be not less than $175 for a half-hour show or $350 for an hour show. In no event shall a composer who composes five minutes or less of new music, under such circumstances, be paid less than the per minute rate applicable if he composed "a five minute or less fragment."

(4) The minimum compensation for employment for the composition of songs shall be governed by the theatrical rate provisions of (b) (2) of this article only.

(5) Any amounts paid to the composer in excess of the minimum compensation, as provided above, may be applied to any other payments required under this agreement.

(6) Theatrical Exhibition of Television Films:

In the event a television motion picture or pictures containing music composed on or after the effective date of this agreement, under the provisions of Article 20 (b)(3) above, is exhibited theatrically (as one or in combination) Producer shall pay to the composer or composers of such music, so used, in such exhibition, the following applicable single amount for an unlimited number of such exhibitions:

The amount, if any, that (i) $350 exceeds the compensation paid such composer or composers for a half hour show so used, or (ii) $700 exceeds the compensation paid such composer or composers employed for a one hour show so used, or (iii) $1,000 exceeds the compensation paid such composer or composers employed for a one and one-half hour show so used, or (iv) $40 exceeds the compensation paid such composer or composers employed for each minute for a five minute or less fragment so used.

If the Producer shall sell, assign, transfer or otherwise dispose of its theatrical exhibition rights in any such television film or shall license the distribution rights to such theatrical exhibition, Producer shall be responsible, or shall require its purchaser or licensee to become responsible for compliance with this provision relating to the initial theatrical exhibition of the film. Upon obtaining such agreement from such purchaser or licensee, Producer shall be relieved of further obligation hereunder, provided Producer sends to the Guild, within 30 days thereafter, a copy of such assumption agreement.

(7) Unused Music:

With respect to theme music or songs intended to be used in a television pilot film, if such pilot is not made within five (5) years after the composition of the theme music or song is completed, the composer of such theme music or song will have a twelve-month option period, commencing with the end of such five-year period, within which to purchase back all rights in such theme music or song, at the Producer's cost. If the composer does not exercise such option in such option period, such option shall thereupon be terminated. If Producer uses such theme music or song in a pilot or otherwise exploits the theme music or song before the composer has completely exercised his option in such option period, the composer's right to such option shall thereupon terminate. If the composer so exercises such option, within such option period, Producer nevertheless shall have the non-exclusive right to use such theme music or song in the particular pilot for which the theme music or song was composed, or in any series based on such pilot.

With respect to songs, if the song intended to be used in a motion picture, other than television pilot films, is not used or otherwise exploited, within five (5) years after the composition of the song is completed, the composer will have a thirty-six month option period commencing with the end of such a five-year period within which to purchase back all rights in such song, at the Producer's cost. If the composer does not exercise such option in such option period such option shall thereupon be terminated. If Producer uses such song in a motion picture, or otherwise exploits it, before the composer completely exercised his option in such option period the composer's right to such option shall thereupon terminate. If the composer so exercises such option, within such option period, Producer nevertheless shall have the non-exclusive right to use such song in motion pictures.

Costs shall be deemed to be the amount Producer paid to the composer for such musical composition, plus fringe benefits and taxes. The composer shall receive back only the music as written in the manuscript delivered to the Producer.

Article 21 .Publication Royalties

Should the Producer, or any subsidiary or affiliated company, or any assignee or licensee of Producer, exploit the music or musical composition (hereinafter referred to as the "composition") then the Producer, or such subsidiary or affiliated company, or such assignee or licensee, shall pay directly to the composer an amount of royalty with respect to such composition not less than the following, and Producer's contract with such subsidiary or affiliated company, or assignee or licensee, shall so require and if Producer's contract does so provide then Producer shall not be responsible for payment of the royalties hereunder:

(a) Five cents (5¢) per copy in respect of regular piano copies sold and paid for in the United States and Canada.

(b) Fifty percent (50%) of all net sums received by the publisher in respect of regular piano copies, orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and/or instruments, and/or other copies of the composition sold in any country other than the United States and Canada; provided, however, that if the publisher should sell such copies through, or cause them to be sold by, a subsidiary or affiliate or any assignee or licensee which is actually doing business in a foreign country, then in respect of such sales, the publisher shall pay to the composer not less than ten percent (10%) of the wholesale selling price in respect of each such copy sold and paid for.

(c) Ten percent (10%) of the wholesale selling price (after trade discounts if any) of each copy sold and paid for in the United States and Canada, or for export from the United States, of orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and/or instruments, and/or other copies of the composition (other than regular piano copies).

(d) (i) If the composition, or any part thereof, is included in any song book, song sheet, folio or similar publication issued by the publisher containing at least four (4), but not more than twenty-five (25) musical compositions, the royalty to be paid by the publisher to the composer shall be an amount determined by dividing ten percent (10%) of the wholesale selling price (after trade discounts, if any) of the copies sold, among the total number of copyrighted musical compositions included in such publication. If such publication contains more than twenty-five (25) musical compositions, said ten percent (10%) shall be increased by an additional one-half percent (1/2) for each additional musical composition.

(ii) If, pursuant to a license granted by the publisher to a licensee not controlled by or affiliated with it, the composition, or any part thereof, is included in any song book, song sheet, folio or similar publication, containing at least four (4) musical compositions, the royalty to be paid by the publisher to the composer shall be that proportion of fifty percent (50%) of the gross amount received by it from the licensee, as the number of uses of the composition under the license and during the license period, bears to the total number of uses of the publisher's copyrighted musical compositions under the license and during the license period. Such royalties shall be computed and paid within thirty (30) days after the expiration of the term of each license, but if any such license term is in excess of one year, such royalties shall be computed and paid annually.

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(iii) In computing the number of the publisher's copyrighted musical compositions under subdivision(ii) hereof, there shall be excluded musical compositions in the public domain and arrangements of musical compositions in the public domain if no royalties are payable with respect to such arrangements by the publisher.

(iv) Royalties on publications containing less than four (4) musical compositions shall be payable at regular piano copy rates.

(e) As to "professional material" not sold or resold, no royalty shall be payable.

(f) Fifty percent (50%) of all net sums actually received by the publisher in respect of any licenses (including statutory royalties) authorizing the manufacture of parts of instruments serving to mechanically reproduce the composition; or to use the composition in synchronization with sound motion pictures produced by anyone other than: (i) the Producer, its subsidiary, and affiliated companies; (ii) any company using the composition in a motion picture financed substantially by or to be distributed by the Producer; and (iii) the producer for whom the composition was originally composed, and its subsidiary and affiliated companies; or to reproduce it upon electrical transcription for broadcasting purposes; except that the composer(s) shall not be entitled to any share of the monies distributed to the publisher by any performing rights society anywhere in the world, or other source, which makes a distribution to composers either directly or through another performing rights society or other person, company, society, association or organization.

(g) If the publisher administers licenses authorizing the manufacture of parts of instruments serving to mechanically reproduce said composition, or the use of said composition in synchronization or in timed relation with sound motion pictures produced by anyone other than: (i) the Producer, its subsidiary, and affiliated companies; (ii) any company using the composition in a motion picture financed substantially by or to be distributed by the Producer; and (iii) the producer for whom the composition was originally composed, and its subsidiary and affiliated companies; or its reproduction upon electrical trahscriptions, or any of them, through an agent, trustee or other administrator acting for a substantial part of the industry and not under the exclusive control of the publisher (hereinafter sometimes referred to as licensing agent), the publisher in determining his receipts, shall be entitled to deduct from gross license fees paid by the licensees, a sum equal to the charges paid by the publisher to said licensing agent.

The foregoing rates shall apply only in cases in which all of the music and lyrics of the composition have been composed by one composer, or in cases in which a musical composition has been composed for which no lyrics have been written.

As to songs, if one person composes the music and another the lyrics, the foregoing rates shall apply, but one-half shall be allocated to the composer of the music and one-half to the author of the lyrics (no allowance being made for the title). If there shall be more than one composer or more than one lyricist, then they shall agree between themselves upon the division of their half of the above royalties, but in the absence of such agreement, their half shall be divided equally between them.

The royalties hereinabove provided for shall be payable only in connection with compositions originally created by the composer, it being agreed that no royalties shall be payable with reference to arrangements, orchestrations, translations or other adaptations or modifications of compositions written by others.

No royalties shall be payable for any uses made by the Producer or by the independent producer for whom the composition was originally composed (or by its or their associated, affiliated, parent or subsidiary corporations or by any persons, firms or other corporations with whom or with which any of said corporations may have contracts or arrangements for the production, performance, television, exhibition or distribution of motion pictures) in motion pictures (theatrical or television) or in connection with any advertising, publicising or exploitation thereof. Nothing in this agreement shall be construed to obligate the Producer or its licensees or assigns to publish, record, reproduce or otherwise exploit any music or musical composition.

Article 21A Recognition of Agreement

The Guild agrees that it will take proper steps to provide that its by-laws carry this agreement into effect and that, during the term of this agreement, it will not maintain or adopt any articles or by-laws or any rules or orders which will be in conflict with this agreement. The Guild shall cause its by-laws to provide that each of its members shall be bound by the provisions of this agreement. The Guild represents and warrants that at all times during the term hereof it will have exclusive jurisdiction over the matters and procedure necessary to carry out the purposes and intent of the foregoing provisions of this Article 21A and over all other covenants and agreements to be kept or observed by the Guild pursuant to this agreement. The Producer will not either alone or in concert with any other Producer signatory to a similar agreement with the Guild take any action of any kind that will interfere with the performance of this agreement on the part of the Producer or violate the provisions of this agreement.

Article 22 Agreement Binding Upon Whom

This agreement shall be binding upon the Producer and its subsidiaries in which it has a fifty percent (50%) or more financial interest and all parties who by reason of mergers, consolidations, reorganizations, sale, assignment or the like shall succeed to or become entitled to a substantial part of the business of Producer.

Producer agrees to notify the Guild within seven (7) days after it executes an agreement with any person, firm or corporation (not covered by the provisions of the preceding paragraph) for the use of its studio for the production of a theatrical or television motion picture. Producer further agrees to notify the Guild within fourteen (14) days after it executes an agreement in the County of Los Angeles, California, with any person, firm or corporation (not covered by the provisions of the preceding paragraph) for the production of a theatrical or television motion picture in the United States where Producer's studio is not used for the production of such picture in the United States; such notice to the Guild shall contain the name and address of such person, firm or corporation as well as the name of the person who signed the agreement on behalf of such person, firm or corporation. An inadvertent failure on the part of the Producer to comply with the provisions of this paragraph shall in no event constitute a default by the Producer or a breach of this agreement.

Article 23 Motion Pictures To Which Agreement Not Applicable

It is understood that the provisions of this agreement shall not apply to newsreels, shorts, advertising shorts, trailers, travelogues, commercial films or news or sports commentations.

Article 24 Geographical Application of this Agreement

Notwithstanding anything to the contrary herein contained, it is specifically understood that this agreement shall apply only to composers whose contracts of employment were executed within the continental limits of the United States (including Alaska and Hawaii) regardless of the place of performance of service thereunder or who perform their services in the United States (including Alaska and Hawaii) regardless of the place their contracts were executed, and shall apply only to such contracts of employment.

Article 25 Minimum Terms

The terms of this agreement for the benefit of the composer are minimum terms; nothing herein contained shall prevent any composer from negotiating and contracting with any Producer for better terms for the benefit of such composer than are herein provided. Only the Guild shall have the right to waive any of the provisions of this agreement on its own behalf or on behalf of or with respect to any individual composer. Such waiver shall be in writing.

Article 26 Producer-Composer Cooperative Committee

Within fifteen (15) days after the execution of this agreement there shall be established a committee to be known as the Producer-Composer Cooperative Committee, composed of not less than sixteen (16) members representative of the Producer and the composer, eight (8) of whom shall be named by the Producer signatories hereto and eight (8) named by the Guild. It is understood that any group of seven (7) or more Producer signatories hereto may establish a separate committee for the purposes hereof, and the Guild will name members to meet with each such committee. Such committee or committees shall meet at least once every sixty days. Deliberations shall be wholly informal and any and all matters affecting the operation and application of this contract, and the promotion of a harmonious Producer-Composer relationship shall be fully and freely discussed. Every effort shall in good faith be made by all members of the committee to prevent abuses from arising under this agreement, to eliminate inequities and to promote cooperation between and mutual understanding of the problems of employer and employee.

CLGA

Article 27 Jurisdictional Disputes

The Guild agrees to cooperate in good faith with the Producer and with other guilds and organizations representing employees of the Producer in working out a method for the determination of jurisdictional disputes without work stoppages.

Article 28 Pension Plan

Producer and the Guild are parties to, and bound by the provisions of the "Motion Picture Industry Pension Plan" (hereinafter referred to as the "Pension Plan") made as of October 26, 1953, with respect to the employees covered hereunder.

In accordance with Article III, sections 2 and 3, of the Pension Plan and subject to the provisions of Article XV of such Pension Plan, relating to private retirement plans, the Producer shall, for the period commencing with February 8, 1965, and for the balance of the term of this agreement pay into the Pension Plan a total of ten dollars and ninety-six cents ($10.96) for each full workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer on or after February 8, 1965, under the terms of this agreement, excluding layoffs, suspension or vacations, or two dollars and twenty-three cents ($2.23) for each week day worked or guaranteed in a fractional workweek.

In accordance with Article III, sections 4 and 5, of the Pension Plan and subject to the provisions of Article XV of such Pension Plan, relating to private retirement plans, every employee covered by this agreement shall, for the period commencing with February 8, 1965, and for the balance of the term of this agreement pay into the Pension Plan six dollars and ninety-one cents ($6.91) for each full workweek guaranteed such employee by Producer or for each full workweek such employee works for Producer on or after February 8, 1965, under the terms of this agreement, excluding layoffs, suspensions or vacations, or one dollar and forty-one cents ($1.41) for each such weekday worked or guaranteed such employee in a fractional workweek. On and after February 8, 1965, Producer shall deduct daily or weekly from the compensation of such employees, as the case may be, the amount of such contribution due from such employee, as above provided, which deduction shall be paid by Producer into the Pension Plan on behalf of such employee as the employee's contribution to the Pension Plan, as herein required.

Contributions with respect to employment on a half-hour television show shall be computed on the basis of 27 hours employment; a one hour television show shall be computed on the basis of a full workweek; per minute employment shall be computed on the basis of one day's employment.

The above contributions are in accordance with the present pattern of contributions by Employers and Employees required under the Pension Plan. In the event the present pattern of contributions under the Pension Plan should be changed during the term of this agreement, then the rate of contributions as provided herein shall automatically be changed to conform to such new pattern and rate of Employer and Employee contributions established under such Pension Plan.

Such money paid by Producer into the Pension Plan, shall not constitute nor be deemed to be wages due to the individual employee subject to this agreement, nor shall said money paid into the Pension Plan, in any manner be liable for or subject to the debts, contracts, liabilities or torts of such employees.

Producer shall be obligated to make its contribution to the Pension Plan, for any such respective employee, as provided above, only as, if and when such respective employee has contributed to the Pension Plan the amount required from him, as provided above.

Article 29 Industry Pension Plan Retirees Health and Welfare Coverage

Producer shall for the period commencing February 1, 1965, and for the balance of the term of this agreement, pay into the Industry Pension Plan through its Administrator, as Agent for transmittal to the Industry Health and Welfare Fund, the following:

> One dollar and seventy-six cents ($1.76) for each full workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer, on or after February 1, 1965, under the terms of this agreement, excluding layoffs, suspensions, or vacations, or thirty-six cents (36¢) for each such weekday worked or guaranteed in a fractional workweek.

Contributions with respect to employment on a half-hour television show shall be computed on the basis of 27 hours employment; a one hour television show shall be computed on the basis of a full workweek; per minute employment shall be computed on the basis of one day's employment.

The above contributions are in accordance with the present pattern of such contributions by employers to the Industry Pension Plan Administrator. In the event the present pattern of such contributions to the Industry Pension Plan should be changed during the term of this agreement, then the rate of contributions as provided herein shall automatically be changed to conform to such new pattern and rate of employer contributions as indicated by such Industry Pension Plan.

The money received by the Administrator of the Industry Pension Plan from such payment, as above provided, shall be kept separate and apart from any funds of the Industry Pension Plan, and shall be paid to the Industry Health and Welfare Fund upon demand by the Health and Welfare Fund. The Health and Welfare Fund shall establish a special reserve fund into which such money shall be placed for the purpose of providing, under proper conditions, for such Health and Welfare coverage as the Trustees of the Health and Welfare Fund may determine to be appropriate for the employees retired under the Industry Pension Plan.

Such money paid by Producer to the Administrator of the Industry Pension Plan for transmittal, shall not constitute nor be deemed to be wages due to the individual employees nor shall said money so paid into the Industry Pension Plan, in any manner, be liable for or subject to the debts, contracts, liabilities, or torts of such employees.

Producer shall be obligated to make such contribution to the Administrator of the Industry Pension Plan for transmittal, for any such respective employee, as provided above, only as, and if such respective employee has contributed to the Industry Pension Plan the amount, and within the time required of him, as provided above in Article 28.

Article 30 Health and Welfare Fund

Producer and the Guild agree to immediately make application to become parties to, and if accepted, to be bound by the provisions of the "Motion Picture Health and Welfare Fund" (hereinafter referred to as the "Welfare Fund") made as of October 20, 1952, with respect to the employees covered hereunder.

In accordance with Article V, sections 1 and 2, of the Welfare Fund the Producer shall, during the term of this agreement for the period commencing with January 1, 1965, and for the balance of the term of this agreement, pay into the Health and Welfare Fund a total of nine dollars and thirty-two cents ($9.32) for each full

workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer on or after January 1, 1965, under the terms of this agreement, excluding layoffs, suspensions or vacations, or one dollar and ninety cents ($1.90) for each weekday worked or guaranteed in a fractional workweek.

Contributions with respect to employment on a half-hour television show shall be computed on the basis of 27 hours employment; a one hour television show shall be computed on the basis of a full workweek; per minute employment shall be computed on the basis of one day's employment.

The above contributions are in accordance with the present pattern of contributions by employers required under the Welfare Fund. In the event the present pattern of contributions under the Welfare Fund should be changed during the term of this agreement, then the rate of contributions as provided herein shall automatically be changed to conform to such new pattern and rate of employer contributions established under such Welfare Fund.

Article 31 Pay Television

For the purpose of this agreement "theatrical exhibition" shall be deemed to include any form of pay television.

If, during this contract, a pay television system is established in the United States and Producer releases any motion pictures on pay television (other than for test or experimental purposes) and the Guild claims that as a result thereof there has been a material increase in theatrical film rentals of such Producer, the Guild, on sixty (60) days' advance written notice given thereafter, may reopen this contract as to all members of the Association of Motion Picture and Television Producers, as a group, with respect only to the adjustment of theatrical minimum rates of compensation thereafter payable. In the event the parties are unable to reach an agreement within a sixty-day period following the commencement of such negotiations, the Guild may instruct its members to withhold services with respect to the production of such motion pictures as to such members of the Association of Motion Picture and Television Producers, as a group.

Producer agrees that prior to the employment of any composer for a motion picture intended primarily for exhibition on Pay TV, other than for tests or experimental purposes, Producer shall give at least sixty days' advance notice to the Guild of such proposed employment. Producer and the Guild agree to meet within thirty (30) days from receipt of such notice for the purpose of negotiating with respect to the terms and conditions for such employment. If no agreement is reached with respect thereto within such sixty-day period, the Guild may, upon a thirty-day written notice to Producer, instruct its members to withhold services with respect to the production of such motion picture.

Article 32 Contract Services Administration Trust Fund

Producer shall for the period commencing February 1, 1965, and thereafter for the balance of the term hereof, pay to the Industry Pension Plan through its Administrator, as Agent for transmittal to the Contract Services Administration Trust Fund, the following:

> Three fourths of one cent (3/4¢) for each work hour guaranteed an employee hereunder by such Producer or hour worked by an employee hereunder for such Producer on or after February 1, 1965 (on the same weekly and daily formula as the contributions paid under the Retired Employees Health and Welfare Fund)

Contributions with respect to employment on a half-hour television show shall be computed on the basis of 27 hours employment; a one hour television show shall be computed on the basis of a full workweek; per minute employment shall be computed on the basis of one day's employment.

This Fund to be used for the administration of apprenticeship and other training programs within the motion picture industry; maintenance of appropriately classified and delineated seniority rosters within the motion picture industry; administration of safety programs and studies within the motion picture industry; administering and financing physical examinations in connection with any uniform industry retirement programs; and generally for the carrying on of similar such programs for the administration of other industry-wide services, studies or education.

The money received by the Administrator of the Industry Pension Plan from such three fourths of one cent (3/4¢) payment, as above provided, shall be kept separate and apart from any funds of the Industry Pension Plan, and shall forthwith be paid to the Contract Services Administration Trust Fund.

Such Trust Fund shall be administered by a Board of Trustees, who shall be appointed by the Association of Motion Picture and Television Producers, Inc.

Such money so paid by Producer shall not constitute nor be deemed to be wages due to the individual employees nor shall said money so paid be in any manner, liable for or subject to the debts, contracts, liabilities or torts of such employees.

Article 33 Significance of Titles and Sub-Titles

The headings of articles, sections and other subdivisions hereof are inserted for the purpose of convenient reference, and it is recognized that they may not adequately or completely describe the contents of the provisions that they head. Such headings shall not be deemed to govern, enlarge, limit, modify or in any other manner affect the scope, meaning or intent of the provisions of this agreement or any part or portion thereof; nor shall they otherwise be given any legal effect.

Article 34 Reports

Producer will submit written reports to the Guild on payments hereunder, for composition on television and theatrical motion pictures, except that such reporting shall not be required in the case of staff composers. Staff composers are regular employees whose duties may include services other than composing.

Article 35 Non-Discrimination

The parties mutually reaffirm their policy of non-discrimination. The Producer reaffirms its policy that no employee shall be discriminated against in employment hereunder, because of race, color, creed, sex, or national origin. The Guild reaffirms its policy of non-discrimination with respect to admission to membership and rights of membership.

Article 36 Severability

If any provision of this agreement shall, during the term hereof, be held void or unenforceable, all other provisions hereof shall continue in full force and effect.

CLGA

Article 37 Indemnification

The Producer and composer may in any contract of employment include any provision for warranties and indemnification against any and all liability, judgments, recoveries, damages, costs and expenses, including attorney's fees, except that:

Composer shall not be required to warrant or indemnify with respect to any material furnished by Producer for incorporation into the composer's music in regard to originality or violation of rights of third parties, or indemnify against judgments, damages, costs and expenses including attorney's fees in connection with suits relating to such incorporated material; nor waive his right to defend himself against a claim for costs, damages, or losses arising out of settlements not consented to by composer. Producer reserves all the rights it may otherwise have against the composer.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

PRODUCER

COLUMBIA PICTURES CORPORATION

By E S Carroll

ASSISTANT SECRETARY

COMPOSERS AND LYRICISTS GUILD OF AMERICA

By Jeff Rhodes

Article 37 Indemnification.

The Producer and composer may in any contract of employment include any provision for warranties and indemnification against any and all liability, judgments, recoveries, damages, costs and expenses, including attorney's fees, except that:

Composer shall not be required to warrant or indemnify with respect to any material furnished by Producer for incorporation into the composer's music in regard to originality or violation of rights of third parties, or indemnify against judgments, damages, costs and expenses including attorney's fees in connection with suits relating to such incorporated material; nor waive his right to defend himself against a claim for costs, damages, or losses arising out of settlements not consented to by composer. Producer reserves all the rights it may otherwise have against the composer.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

PRODUCER

METRO-GOLDWYN-MAYER INC.

By _____
Asst. Secretary

COMPOSERS AND LYRICISTS GUILD OF AMERICA

By _____

Article 37 Indemnification

The Producer and composer may in any contract of employment include any provision for warranties and indemnification against any and all liability, judgments, recoveries, damages, costs and expenses, including attorney's fees, except that:

> Composer shall not be required to warrant or indemnify with respect to any material furnished by Producer for incorporation into the composer's music in regard to originality or violation of rights of third parties, or indemnify against judgments, damages, costs and expenses including attorney's fees in connection with suits relating to such incorporated material; nor waive his right to defend himself against a claim for costs, damages, or losses arising out of settlements not consented to by composer. Producer reserves all the rights it may otherwise have against the composer.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

PRODUCER

PARAMOUNT PICTURES CORPORATION

By _____

COMPOSERS AND LYRICISTS GUILD OF AMERICA

By _____

Article 37 Indemnification

The Producer and composer may in any contract of employment include any provision for warranties and indemnification against any and all liability, judgments, recoveries, damages, costs and expenses, including attorney's fees, except that:

Composer shall not be required to warrant or indemnify with respect to any material furnished by Producer for incorporation into the composer's music in regard to originality or violation of rights of third parties, or indemnify against judgments, damages, costs and expenses including attorney's fees in connection with suits relating to such incorporated material; nor waive his right to defend himself against a claim for costs, damages, or losses arising out of settlements not consented to by composer. Producer reserves all the rights it may otherwise have against the composer.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

PRODUCER

TWENTIETH CENTURY-FOX FILM CORPORATION

By _____
ASSISTANT TREASURER

COMPOSERS AND LYRICISTS GUILD OF AMERICA

By _____

FORM APPROVED
20th Century
Fox Film Corp.
Legal Department

Date JUL 12 1982

Article 37 Indemnification

The Producer and composer may in any contract of employment include any provision for warranties and indemnification against any and all liability, judgments, recoveries, damages, costs and expenses, including attorney's fees, except that:

Composer shall not be required to warrant or indemnify with respect to any material furnished by Producer for incorporation into the composer's music in regard to originality or violation of rights of third parties, or indemnify against judgments, damages, costs and expenses including attorney's fees in connection with suits relating to such incorporated material, nor waive his right to defend himself against a claim for costs, damages, or losses arising out of settlements not consented to by composer. Producer reserves all the rights it may otherwise have against the composer.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

PRODUCER

UNIVERSAL PICTURES COMPANY, INC.

By _____
ASSISTANT SECRETARY

COMPOSERS AND LYRICISTS GUILD OF AMERICA

By _____

Article 37 Indemnification

The Producer and composer may in any contract of employment include any provision for warranties and indemnification against any and all liability, judgments, recoveries, damages, costs and expenses, including attorney's fees, except that:

Composer shall not be required to warrant or indemnify with respect to any material furnished by Producer for incorporation into the composer's music in regard to originality or violation of rights of third parties, or indemnify against judgments, damages, costs and expenses including attorney's fees in connection with suits relating to such incorporated material; nor waive his right to defend himself against a claim for costs, damages, or losses arising out of settlements not consented to by composer. Producer reserves all the rights it may otherwise have against the composer.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

PRODUCER

WALT DISNEY PRODUCTIONS

By Bernard Dyer

COMPOSERS AND LYRICISTS GUILD OF AMERICA

By Jerry Livingston

Article 37 Indemnification

The Producer and composer may in any contract of employment include any provision for warranties and indemnification against any and all liability, judgments, recoveries, damages, costs and expenses, including attorney's fees, except that:

Composer shall not be required to warrant or indemnify with respect to any material furnished by Producer for incorporation into the composer's music in regard to originality or violation of rights of third parties, or indemnify against judgments, damages, costs and expenses including attorney's fees in connection with suits relating to such incorporated material; nor waive his right to defend himself against a claim for costs, damages, or losses arising out of settlements not consented to by composer. Producer reserves all the rights it may otherwise have against the composer.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

PRODUCER

WARNER BROS. PICTURES, INC.

By _____

VICE PRESIDENT

COMPOSERS AND LYRICISTS GUILD OF AMERICA

By _____

EXHIBIT 21 - 1967 MINIMUM BASIC AGREEMENT -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

(Reproduced herein at pages 313a through 345a)

PRODUCER - COMPOSERS AND LYRICISTS GUILD OF AMERICA
MINIMUM BASIC AGREEMENT OF 1967

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BORAM REPORTER

6/7/77

PRODUCER - COMPOSERS AND LYRICISTS GUILD OF AMERICA
MINIMUM BASIC AGREEMENT OF 1967

THIS AGREEMENT, executed as of this 1st day of July, 1967, by and between COMPOSERS AND LYRICISTS GUILD OF AMERICA, INC., an incorporated association of composers and lyricists, hereinafter referred to as the "Guild," and the following companies, separately and respectively, each hereinafter referred to as "Producer" and collectively referred to as "Producers":

Admiral Pictures, Inc.; The Alpha Corporation; American International Productions, a California Corporation; Ashland Productions; Aubrey Schenck Enterprises, Inc.; Banner Productions, Inc.; Bing Crosby Productions, Inc.; Brien Productions, Inc.; Bristol Pictures, Inc.; Charleston Enterprises Corporation; Cherokee Productions; Chrislaw Productions, Inc.; Columbia Pictures Corporation; Four Star Television; Frank Ross Productions; Geoffrey Productions, Inc.; Gibraltar Productions, Inc.; Harold Hecht Company (Los Angeles); Herbert Leonard Enterprises, Inc.; Jack Chertok Television, Inc.; The Kappa Corporation; Lawrence Turman, Inc.; Leonard Films, Inc.; Leonard Freeman Productions; Margate Pictures, Inc.; Mayberry Enterprises; Metro-Goldwyn-Mayer Inc.; The Mirisch Corporation of Delaware; Mirisch T.V., Inc.; Motion Pictures International, Inc.; Norlan Productions, Inc.; Oakmont Productions, Inc.; Paramount Pictures Corporation; Rainbow Productions, Inc.; Rhodes Pictures, Inc.; Robert B. Radnitz Productions, Ltd.; Tandem Productions, Inc; The Stanley Kramer Corporation; Theme Pictures, Inc.; Twentieth Century-Fox Film Corporation; Universal City Studios, Inc.; The Walden Film Company; Walt Disney Productions; Warner Bros.-Seven Arts, Inc.

W I T N E S S E T H :

Article 1 Definitions

The following terms or words used herein shall have the respective meanings indicated below:

(a) A "composer" is a person who is employed by the Producer for the purpose of composing music and/or lyrics for use in the production of motion picture photoplays.

(b) "Composing" is the act, process or art of creating music or lyrics or both.

(c) "Underscoring" is music composed or used to accompany dramatic action or visual images in motion pictures, but having no significance to the actors and of which the actor is not, as part of the story or plot, aware.

(d) "Song" is (i) the music and lyric of any separate musical composition of which the actors in the motion picture are aware as part of the plot or story, or (ii) the music and lyric of a separate musical composition intended to be heard by the audience.

(e) A "member of the Guild in good standing" shall be a member of the Guild who has tendered the initiation fees and periodic dues uniformly required as a condition of acquiring or retaining membership.

(f) "Motion pictures" means and includes motion pictures whether made on or by film, tape or otherwise and whether produced by means of motion picture cameras, electronic cameras or devices, or any other combination of the foregoing, or by any other methods or devices now used or which may hereafter be adopted.

(g) The term "theatrical motion pictures" (hereinafter also referred to as "motion pictures" or "pictures") as used herein means motion pictures initially released in theatrical exhibition.

(h) The term "television motion pictures" (herein also referred to as "television films") as used herein means and includes motion pictures initially released to free television.

Article 2 Effective Date

The effective date of this agreement is July 1, 1967. The terms and conditions of this agreement shall not apply to individual employment contracts with composers in effect on June 30, 1967, during the term of such contracts, including option extensions thereof. Except, however, that the new wage scales contained in Article 20 shall be effective commencing as of January 1, 1967.

Article 3 Term of Agreement

The term of this agreement shall commence on July 1, 1967 and shall continue for a period of two (2) years to and including June 30, 1969. The provisions of this agreement shall continue in effect during negotiations for extension or modification of this agreement, which shall commence sixty (60) days after written notice by either party but not prior to May 1, 1969, and the new agreement shall be effective upon and as of a date to be agreed upon during the negotiations.

Article 4 Recognition

(a) This agreement shall apply only to services rendered under employment with Producer. It shall not apply to material purchased or otherwise licensed, nor to independent contractors, or supervisory employees, or to other employees whose participation in writing lyrics or music may be incidental to their bona fide employment in other capacities, provided, however, that if such last mentioned employee, with the knowledge of Producer, on two or more occasions, composes the entire lyrics or entire music of a song hereunder, such employee shall be deemed to be a composer subject to the terms of this agreement, with respect to such services, commencing with the second such occasion.

When a person is under the direction and control of the Producer as to the selection of and the manner and means by which the music for the motion picture is to be composed, he shall not be deemed to be an independent contractor. The conducting of an orchestra, as such, shall not thereby necessarily constitute such person a supervisory employee, for the purpose of this agreement.

It is the policy of the Producer not to utilize the independent contractor form of contract in a manner which would undercut the minimum requirements of the basic agreement. Producer shall send the Guild written notice of each independent contract agreement it makes.

(b) The Producer shall deliver to the Guild once each week a list of the names of composers in Producer's employ at any time during the preceding week, provided that failure on the part of the Producer to furnish any list shall not constitute a default by the Producer or a breach of this agreement, unless the Producer fails to deliver such list within seven (7) days after receiving from the Guild a written request so to do. Inadvertent failure on the part of the Producer to comply with the provisions of this paragraph shall in no event constitute a default by the Producer, or a breach of this agreement.

(c) The Producer recognizes the Guild as the exclusive representative for the purpose of collective bargaining of all composers employed under and subject to this agreement.

Article 5 Guild Shop

(a) During the term of this agreement, each composer employed by the Producer shall be or become a member of the Guild in good standing on or after the 30th day following the beginning of such employment, or the effective date of this article, whichever is later.

For the purpose of this paragraph (a) of this Article 5, the date of the beginning of employment shall be the date of the first employment of such a composer with any member company of the Association of Motion Picture and Television Producers, Inc., who is a signatory to a collective bargaining agreement with the Guild.

The foregoing interpretation of the term "first employment" has been approved in principle by an advisory opinion of the General Counsel of the National Labor Relations Board. If such General Counsel or the local Regional Director of the Board, or the Board or a court of competent jurisdiction shall change such opinion or ruling, then the new ruling or opinion shall prevail until the same is reversed by a court of competent jurisdiction.

(b) The provisions of paragraph (a) of this article shall not apply:

(1) To a composer who is not a member of the Guild at the time of his first employment, and who does not become a member in good standing within the 30 days, as above provided, for the period necessary to permit him to complete the performance of his services in connection with his then current assignment.

(2) To a composer whom the Producer employs as a condition of the sale or license of material.

(3) To a composer employed by reason of special skill or knowledge.

(4) To a composer who on or before the effective date of this article entered into an agreement with Producer and who was not on such date a member of the Guild in good standing, for the full term of such employment agreement including options, renewal periods and extensions exercisable by the Producer.

However, the composers employed by the Producer within exceptions (2) or (3) above, shall not exceed 10% of the total number of composers in the employ of the Producer. For the purpose of such computation, if the Producer has in his employ at any time less than ten (10) composers then one of such composers so employed may fall within one of the exceptions mentioned in subparagraph (2) or (3) above. Promptly following the employment of any composers claimed by the Producer to be within exceptions (2) or (3) above, the Producer will notify the Guild in writing of the name of the composer employed, the date of the employment agreement and the fact that the Producer claims that such composer is an exception hereunder.

For the purpose of such computation, a composer who is employed under an exclusive contract by a Producer shall be regarded as being employed by the Producer at all times during the term of such contract, including periods during which the composer may be on layoff and periods during which such contract may be suspended by reason of illness or default of the composer or otherwise. The composer shall be regarded as continuing in the employ of the Producer by which he is employed regardless of the fact that his services may be loaned to another Producer.

(c) Promptly after request by any person designated by the Producer, the Guild will admit such person to membership in the Guild upon terms and conditions not more burdensome to such person than those then applicable to other applicants. Membership shall be effective as of the date of such request. Guild agrees that during the term it will not impose any unreasonable initiation fee as a condition to admission to membership, and agrees that during the term hereof it will not impose upon its members any obligation to pay dues that do not uniformly apply to all members of the Guild. It is agreed that the Guild shall not close its membership books or otherwise prevent any person who wishes to become or remain a composer from becoming a member of the Guild, but on the contrary (subject to the provisions hereof relating to waivers as to members suspended or expelled) will make available the privileges of membership to any and all composers employed by the Producer. The Guild will reinstate

or readmit to membership any composer who applies for reinstatement or readmission, after being declared to be not in good standing or after suspension, expulsion, or resignation for any reason whatsoever, provided the composer will apply for such reinstatement or readmission and with such application tender to the Guild unpaid dues permitted by law, and upon such tender the Producer may employ or continue to employ such composer. Instead of readmitting or reinstating such composer, the Guild may at its option grant to the Producer a waiver as to such composer, in which event, for the purpose of determining the Producer's compliance with the provisions of this Article 5, such composer shall not be considered as being employed by the Producer.

(d) If during any time that a composer is employed by the Producer under a contract of employment such composer is or becomes a member of the Guild in good standing and if such composer shall subsequently and before his employment under such contract terminates cease to be a member of the Guild in good standing, then.

(1) If such composer has ceased or shall cease to be a member for any reason other than his failure to pay dues, such composer shall, for the purposes of this agreement, be deemed to remain a member of the Guild in good standing throughout the composer's employment under said contract of employment as the same may be extended or renewed.

(2) If the composer has ceased or shall cease to be a member in good standing by reason of his failure to pay dues, such composer shall, for the purposes of this agreement, be deemed to remain a member in good standing for a period of fifteen (15) days after written notice that he has ceased to be a member in good standing for failure to pay dues from the Guild to both such composer and the Producer, and if, prior to the expiration of said fifteen (15) days period payment of said dues shall be made by the composer or the Producer, then for the purposes of this agreement, such composer shall not lose his status as a member in good standing. To the extent that it may be lawful for the Producer to do so the Producer may require as a condition to employment that any composer execute such written consent or consents as may be necessary so that, if the Producer elects, it may pay to the Guild any dues of any composer and the Producer shall have the right insofar as its obligations to the Guild and to any composer under the terms and provisions of this agreement are concerned, if it elects, to deduct the amount of such dues from any compensation then or thereafter due or to become due to the composer; provided, however, that if either such payment or deduction is or shall become contrary to law or any statute or is declared by any court of competent jurisdiction in the State of California or by any Federal court or the National Labor Relations Board or its General Counsel or by any other Board or individual having jurisdiction over the matter to be in violation of any applicable law or statute, and if by reason thereof Producer fails to deduct and pay to the Guild such dues as aforesaid and shall notify the Guild thereof in writing within the fifteen (15) day period after any notice from the Guild above mentioned, then although such dues are not paid within the fifteen (15) day period, for the purposes of this agreement such composer shall nevertheless be deemed to remain a member of the Guild in good standing throughout the term of the composer's employment as the same may be extended or renewed.

(3) Producer may require that if a composer shall fail or refuse to become or remain a member of the Guild in good standing as above provided, its employment agreement with such composer shall terminate.

(4) If the Producer is required or directed by any decision of a court of competent jurisdiction or any proper governmental authority to refund to any composer, in whatsoever form the same may be recovered, any dues deducted and paid to the Guild by the Producer under the provisions of subparagraph (2) of this paragraph, the Guild agrees to repay to the Producer the amount of such dues so refunded. The Guild will cooperate with the Producer in obtaining the necessary authorizations from composers for the payment and deduction of dues in the manner provided in subparagraph (2) above.

(e) The Guild will facilitate employment of its members by the Producer and will at all reasonable times promptly furnish to the Producer in writing information concerning the status of any of its members, and the Producer shall be entitled to rely upon such information so furnished by the Guild. Promptly after the execution hereof the Producer will furnish to the Guild a list of the composers then employed by it.

(f) The Guild represents and warrants that discipline, resignation, admission, reinstatement, readmission and all other matters relating to membership status will at all times during the term hereof be within the exclusive jurisdiction of the Guild, and the Guild agrees that it will exercise such jurisdiction subject to and in accordance with the provisions and intent of this Article 5 and of any other applicable provisions of this agreement.

(g) It is understood that the provisions of this Article 5 shall never under any circumstances be so construed during the term of this agreement as to constitute or permit what is known as a "closed shop" or construed in any manner that will at any time deprive the Producer of its right to employ or continue the employment of a composer who is not a member of the Guild in good standing, or who does not become a member of the Guild in good standing within the period prescribed in paragraph (a) of this Article 5 if the Producer has reasonable grounds for believing that such a membership was not available to such composer on the same terms and conditions generally applicable to other like members of the Guild, or if the Producer has reasonable grounds for believing that membership in the Guild was denied, deferred, suspended or terminated for reasons other than the failure of such person to tender the applicable initiation fee and/or periodic dues uniformly required as a condition for acquiring or retaining membership in the Guild.

Article 6 Credits for Screen Composition

(a) Screen Credit for composition subject to this agreement is to be given for the initial use of the composed music or lyrics, but only in the motion picture for which it was specifically composed and used, and only to those who actually composed such music and/or lyrics so used, as follows:

(1) Underscoring

Each composer whose music composed for the picture constitutes more than one-third (1/3) of the total underscoring contained in the final motion picture, which contribution shall be determined in minutes, shall be given screen credit. However, in no event shall Producer be required to give more than two such composers such credit. If one-third (1/3) or more of the total underscoring used in the motion picture is by one composer,

he is to receive credit even if the music was previously used, unless such composer does not desire a credit, or it would be a burden on Producer to make such a determination. In any event, credit for any such re-used music need be given by Producer to only one composer. Producer, however, may give credit for composition underscoring to a composer whose music is less than one-third (1/3) of the total underscoring contained in the motion picture.

The form of underscoring screen credit shall be:

> Where the composer composed all of the music, or where the composer composed all of the music except that for which credit is specifically given to others, the form of underscoring screen credit shall be "Music by" or "Music Score by" or "Music Composed by" or "Music Score Composed by" or words of similar nature. Where the composer has composed a theme for a television film without lyrics, the screen credit shall be "Theme by". In all other cases where the composer composed less than all of the music and credit is not given to others, the form of credit shall be "Music Scored by" or such other credit as may be agreed upon between the composer and Producer.

The form of screen credit for songs shall be:

> "New Songs by", or "Song by", or "Songs by"; or "Original Songs by"; or "Music & Lyrics by", or "Words and Music by"; or "Words by and Music by"; or "Lyrics by and Music by", "Theme by" (for television films), or words of a similar nature, and in addition such other credits as may be agreed upon by the composer and Producer.

(3) The Producer shall give to the Guild and composers of the music and/or lyrics (which is subject to credits) used in the final motion picture, notice of credits intended to be used. If no protest, that an appropriate composer has been denied the required credit, is received from them by Producer within 48 hours, excluding Saturdays, Sundays and holidays, after such notice is given, the credits shall be deemed to be final. If any such composer or the Guild should within such time protest to Producer the lack of such required credit, then the question of whether the appropriate credit has been given to the composers concerned shall be resolved by the composers involved and the Guild, within 96 hours, excluding Saturdays, Sundays and holidays, after such protest is made. In the event of such protest, the Producer will allow the Guild and the individual composers involved reasonable access to such scores in order to aid in the final determination of credits. In the case of underscoring, the question to be determined shall be whether each of the composers concerned composed more than such required one-third (1/3) of the underscoring. Such a determination of the quantity of such composers' contribution shall be final as to the parties involved. The authority of the Guild and such composers shall be limited to this sole issue. If no such determination is made by the Guild and the composers within such 96 hours, the credits as submitted by the Producer shall be final. When such credits so

become final, there shall be no appeal of any kind from them. The above procedure and conditions shall be the exclusive remedy for determining any dispute arising in connection with credits hereunder.

(b) The Producer shall not be limited as to the size or placement of the credit.

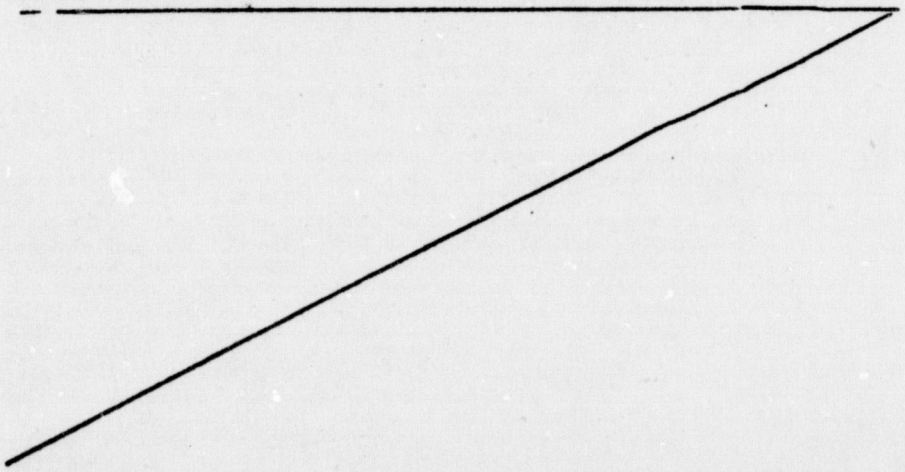
(c) With respect to material purchased or otherwise licensed, Producer shall have the unlimited right, as it may see fit, to give or not give screen credit for the composition of music or lyrics in any manner.

(d) If a composer, at the time of his employment or at any time thereafter, states in writing that he is not and never was a member of the Communist Party, and such representation is shown to have been false, or if a composer at any time refuses on request of Producer to make a statement as to whether he is or ever was a member of the Communist Party, of if a composer upon such request states in writing that he is a member of the Communist Party, or if a composer before the House Un-American Activities Committee or any similar duly constituted Congressional or State Legislative or executive committee, has refused to testify as to whether he is or was a member of the Communist Party, or if a composer having been subpoenaed to appear before such a committee fails or refuses to appear in response to such subpoena, the Producer shall be relieved of its obligations to the Guild under this Article 6, and shall also be relieved of any obligations to accord credit to the composer under his employment agreement.

The Producer, however, shall not be relieved of its obligation to give such credit by reason of any act or failure to act, on the part of the composer, described in the preceding sentence, if prior to the composer's employment by the Producer (i) such act or failure to act by such composer had occurred and (ii) such occurrence was known to the Producer.

Article 7 Cue Sheets

Producer shall prepare for each motion picture a music cue sheet designating the composer of each cue and every part thereof indicating the nature and duration of its use in such motion picture. The cue sheet may also indicate any other information desired by Producer. Producer shall furnish one copy of the cue sheet to the



Guild. If no protest is made to the Producer by the composer or the Guild within 10 days after receipt by the Guild, the composer and the Guild shall be deemed to have waived any breach of this article; but if a protest is so made the Producer shall correct the cue sheet if Producer agrees it is erroneous or shall refer the protest to the Conciliation Committee for determination, but such protest shall not be subject to arbitration. An inadvertent failure by the Producer under any provisions of this article shall not be considered a breach of this agreement.

Composer will cooperate with producer at producer's request in the preparation of music cue sheets.

Article 8 Force Majeure

Suspension of payment of salary permitted by the so-called "force majeure" clause of employment agreements with composers shall be limited with respect to each continuous cause of suspension, as follows:

(a) Composers receiving the minimum compensation, may be suspended for 6 weeks without salary.

(b) Composers receiving above the minimum, but less than $1,000 per week may be suspended for 8 weeks without salary.

(c) As to composers receiving $1,000 per week or more, the matter of suspension of services and reduction of compensation shall be subject to individual negotiations between the Producer and the composer.

Article 9 Delivery of Contracts

Producer agrees, that from and after the effective date hereof, upon the employment of any composer, such composer shall be tendered, within a reasonable length of time a written contract setting forth the terms of employment subject to this agreement. Within two weeks after such written employment contract has been fully signed, a copy thereof shall be delivered to the composer and a copy to the Guild, and if both of such copies are not executed by the Producer, the copy not so executed shall be accurately conformed by an officer or employee of the Producer, who shall place upon any such conformed copy his signature or initials in form sufficient to identify such officer or employee.

Article 10 Individual Contracts

This agreement applies to and is incorporated into the provisions of each individual contract between the employer and a composer with respect to services subject to this agreement, and such individual contract shall contain a statement to such effect.

Article 11 Copies of Independent Contractor Agreements

When a dispute arises hereunder between the Producer and the Guild concerning any independent contractor agreement, the Producer, upon the Guild's request, will make available to the Guild, a copy of such agreement, for the purpose of determining its status.

Article 12 Speculative Composition

The Producer and the Guild agree that there shall be no speculative composition, nor shall either party condone it as a practice.

The Producer and the Guild recognize that there is possibly an area wherein the proper and constructive exchange of ideas and criticism between a composer and a Producer may be claimed by the Guild to be speculative composition. Whenever the Guild feels that speculative composition has occurred, the case will be referred to conciliation and arbitration and the Producer's intent as determined by the facts shall be an important factor in the consideration.

The Producer will not agree with any composer that the composer shall write on speculation or that payment shall be contingent upon the acceptance or approval of the Producer, except that this does not limit the submission of original composition or prevent the Producer from discussing with any composer any ideas suggested by such composer, or discussing with any composer any ideas or any material suggested by the Producer in order to determine the composer's thoughts and reactions with respect to any such idea or other material for the treatment or development thereof. Without in any way limiting the free exchange of ideas and constructive suggestions in connection with the submission of material by a composer to the Producer, and without limiting the composer's right to revise the material as a result of such exchange of ideas, the Producer and the composer will not, in the absence of a contractual relationship, engage in revising such material under continuous direction and supervision by the Producer.

It is understood that if a Producer enters into an agreement with any person who undertakes to compose material on an Independent Contract or similar basis and the Producer pays such person a separate consideration and receives therefor an option or right of first refusal to acquire the Motion Picture or other rights in such material when completed, neither such agreement, nor the consummation thereof by the acquisition of such rights shall constitute a violation of the provisions of this Article 12.

Article 13 Rights Arising From Composition

(a) As used in this Article 13, the following terms shall have the following meanings:

"Composition" means any and all music and lyrics written, composed, submitted, added, improvised, interpolated or invented by the Composer in the course of his employment by the Producer.

"Society" means any performing rights society, or other collection agency or organization, which, either directly or through affiliates, maintains a regular system of collecting fees from the users of compositions for the privilege of performing the same in public for profit, for the benefit of both composer-members and publisher-members, and which divides its aggregate net collections of such fees equally between its publisher-members and composer-members, or which has agreed in writing to divide its net collections with respect to performances of the compositions involved equally between the composer and the publisher, hereinafter referred to.

"Performing Rights" means those public performing rights which are, from time to time, as a practical matter, administered and controlled by the Society involved.

(b) The Producer, as employer for hire of the composer, is entitled to and shall own all rights of every kind and character, without any restriction, limitation or reservation whatsoever, in and to the compositions, and the copyrights therein, and any and all renewals and extensions of such copyrights everywhere in the world, specifically including the copyrights and all renewals and extensions thereof in the United States. Without limiting the generality of the foregoing, it is specifically understood and agreed that included in the ownership of all rights of the Producer in and to the compositions is the specific and irrevocable right under any and all circumstances, in perpetuity, to perform publicly for profit, or otherwise, and to authorize others so to do (by any and all present and future methods and means of public performance, whether or not now known or contemplated) the compositions, or any part or parts thereof, throughout the world. Such rights include, but are not limited to, the Performing Rights, as hereinabove defined.

(c) In order to assure the composer of participation in the revenue which may be derived from performances of the compositions, Producer agrees that in the event the composer is, on the date of his employment by Producer, a member or licensor of a Society, Producer will, and it does hereby, transfer and assign the world-wide Performing Rights (as hereinabove defined) in and to the compositions to the composer and a publisher of Producer's choice, which publisher may, but need not, be a subsidiary or affiliate of Producer, but which publisher shall be a member or licensor of the same Society, or of an affiliate of the same Society, as the composer. Notwithstanding anything herein contained, however, there is hereby excepted and reserved from said transfer and assignment the non-exclusive right to perform the compositions in any and all situations, throughout the world, where it is, or may from time to time be, unlawful for the Society, or any of its affiliated bodies to collect performance-fees, or where the Society, or any of its affiliated bodies, does not, from time to time, for any reason whatsoever, actually maintain a regular system of collecting performance fees. In any and all such situations, the Producer may authorize the performance of the compositions in and as a part of the motion picture in which they are included and trailers thereof, or otherwise, without payment of any performance fees whatsoever to the composer, or to the Society, or to the publisher or anyone else.

(d) The Producer has agreed to and does hereby transfer and assign the Performing Rights, as set forth in paragraph (c) above, only conditioned upon and subject to the following:

(1) That the motion pictures (including trailers) and copies thereof containing the compositions may be exhibited at any place in respect of which there is subsisting a valid license granted by the Society or by one of its affiliated bodies (as the case may be).

(2) That no such license shall be required for performing the compositions:

(i) for the purpose of reproducing the same in synchronism or timed relation with the motion pictures and copies thereof during the production thereof;

(ii) in any of the situations referred to in paragraph (c) hereof with respect to which Producer reserves the non-exclusive right to perform the compositions.

(3) That if the proprietor or licensee of any place capable of being licensed by the Society or one of its affiliated bodies fails or neglects to hold a license, as aforesaid, the right of the Society, or of the affiliated body concerned, shall be against such person exclusively.

(4) That, under no circumstances, shall the Society, or any of its affiliated bodies, or the composer or any successor in interest of the composer, or the publisher have the right to take any proceedings in respect of any unlicensed performance that would have the effect of enjoining and/or preventing and/or otherwise interfering with the public performance anywhere in the world and by any means or method now or hereafter known of the motion pictures or any portion thereof or any trailer thereof with the compositions included therein, nor shall the Producer or the publisher be liable to the composer for any action that the Society or any of its affiliated bodies may or may not take in administering the Performing Rights or for any payments that the Society may or may not make to the composer.

(5) That the compositions need not be published as a condition of the payment of the publisher's share of performance fees.

(6) That neither the Producer nor the distributor nor the publisher shall, under any circumstances, be liable to the composer or his successors in interest, or to the Society or its affiliated bodies, nor shall the Producer or the distributor be liable to the publisher, for any payment of any sums by reason of performance of the compositions as contained in the motion pictures, or otherwise.

(7) That under no circumstances shall the composer or his heirs, executors, administrators or other personal representatives, agents or assigns have the independent right to license performances of the compositions as included in the motion pictures or trailers thereof, or to otherwise interfere in any way with the distribution and exhibition of such motion pictures containing the compositions.

(8) That if, after the transfer and assignment referred to in paragraph (c) hereof, the composer should resign from or cease to be a member or licensor of the Society, the Performing Rights in and to the compositions involved shall, nevertheless, continue to be controlled and administered by the Society so long as the publisher remains a member of said Society, that if, after said transfer and assignment, the publisher should resign from, or cease to be a member or licensor of the Society or an affiliate of the Society, the Performing Rights in and to the compositions involved shall, nevertheless, continue to be controlled and administered by the Society so long as the composer remains a member of said Society; and that if, after said transfer and assignment, both the composer and the Publisher shall no longer be members or licensors of the Society or the Society should cease to exist or function, then the Performing Rights in and to the compositions involved shall revert to the Producer.

Notwithstanding the transfer and assignment referred to in paragraph (c) hereof, it is agreed that the Publisher shall always have the right to transfer the Performing Rights acquired by it pursuant thereto to another publisher which is a member of the same Society, and the Producer shall always have the right to cause the Performing Rights to be transferred to another publisher which is a member of the same Society.

(9) That for the purpose of protecting the motion picture in which any composition is used or to be used, the Producer or the Publisher shall always have the right to impose restrictions upon the performance of such composition apart from such motion picture.

Article 14 No Strike Clause

The Guild agrees that during the term hereof it will not call or engage in any strike, slowdown or stoppage of work affecting motion picture production against the Producer.

The kind of strike referred to hereinafter in this paragraph is a strike called, either (a) pursuant to the written vote therefor of 66% of the votes of active members of the Guild voting on the question at a meeting (called on at least two (2) days advance written notice of the taking of a strike vote) or, in a mail vote; or (b) with the written assent of 66% of the active members of the Guild without a meeting or mail vote.

If, after the expiration or other termination of the term of this contract, the Guild shall call a strike against any producer, then each respective then current employment contract of composer members of the Guild (hereinafter for convenience referred to as "members") with such Producer shall be deemed automatically suspended, both as to service and compensation, while such strike is in effect, and each such member of the Guild shall incur no liability for breach of his respective employment contract by respecting such strike call, provided such member shall promptly, upon the termination of such strike, and on the demand of the Producer, perform as hereinafter in this paragraph provided, and the member shall be deemed to have agreed as follows.

(a) That if the composer has been assigned to the composition of the music or lyric for a motion picture at the time any such strike is commenced, he will, after the termination of such strike and upon the request of the Producer, report to the Producer and perform his services in the completion of such assignment at the same salary and upon the same terms and conditions as were agreed upon prior to the commencement of said strike.

(b) That he will immediately, after the termination of such strike and upon the request of the Producer, execute a new contract on the same terms and conditions, and at the same salary or other compensation as provided in the employment contract which was in effect at the time the strike commenced, except that such new contract shall be for a period or periods, including options, equivalent to the unexpired term of the contract which was in effect when such strike was commenced.

(c) That he will, in lieu of (b), after the termination of such strike, at the option of the Producer, and upon its demand, execute an agreement in writing with the Producer extending the term or period of such personal service contract in effect when such strike was commenced for a period of time equal to the period of any suspension by such strike.

If the member shall fail to perform the foregoing, or if he shall fail actually to finish his services in the assignment mentioned in (a), as provided in (a) (except by reason of his death, physical disability or default by the Producer), then the waiver of liability by the Producer heretofore given shall be null and void.

The member further agrees that the statute of limitations as a defense to any action by the Producer against the member for his failure to perform during such strike is extended by a period equivalent to the duration of such strike and the period of the strike shall not be considered a period of laches. If the member asserts any claim or defense by reason of the expiration of time during which he can be required to perform services by virtue of any statute (such as the seven year statute) which claim or defense is based in whole or in part on the lapse of time during such strike, the waiver by the Producer is ineffective thereupon, and the statute of limitations as to the Producer's rights is waived by the member automatically.

The automatic suspension provisions of this paragraph shall not affect the Producer's right to sue any individual composer for breach of contract arising during the period of such strike, unless such composer shall have complied with his obligations under the provisions of this paragraph. Nothing herein contained shall be construed to deprive the Producer of its right to terminate the employment contract at any time after such member shall strike or otherwise fail or refuse to perform services.

The provisions of this paragraph shall be deemed included in all employment contracts between composers and Producer which are now in effect and all such employment contracts which shall be entered into during the effective term of this collective bargaining agreement.

The Guild agrees that it will take such affirmative actions as may be necessary and lawful in order to require its members to perform their respective obligations under the provisions of this paragraph.

Notwithstanding the expiration or other termination of the term of this collective bargaining agreement, by termination or otherwise, the provisions of this paragraph shall be and remain in full force and effect for a period of seven (7) years following the termination of any such strike, unless this covenant be sooner terminated by the written consent of Producer and Guild.

The Guild is a corporation. Neither the Guild nor any officer, agent, director or member of the Guild shall be liable for any strike, slowdown or work stoppage, unless the same be authorized by the Guild in accordance with its by-laws. However, any officer, agent, director or member who affirmatively participates in, procures or induces the strike, slowdown or work stoppage, contrary to the terms of this agreement, shall not be immunized from liability by reason of the provisions of this article. Provided further that the foregoing exemption of the first sentence above shall not apply unless the Guild upon request from the Producer affected thereby shall proclaim promptly and publicly that such strike, slowdown, or work stoppage, is unauthorized, and follows such pronouncement within a reasonable time thereafter, if requested so to do by the Producer affected, with disciplinary proceedings in accordance with its by-laws against the participants in such unauthorized action.

Producer agrees it will not call or engage in any lockout of members, during the term of this agreement.

Article 15 Location Expenses

If a composer is required by the Producer to perform services on any location sufficiently far away from the Producer's studio so that overnight accommodations are reasonably necessary, the Producer shall furnish and pay for the reasonable board and lodging of the composer while required to remain on any such location, and agrees to furnish for the composer first-class transportation, if available, to and from any such location, it being understood that such first-class transportation need not include a drawing room or compartment or passage on any so-called "extra fare" train, and the Producer may in any contract of employment between the Producer and a composer designate a reasonable daily maximum liability on the part of the Producer for such board and lodging of the composer.

In addition, Producer shall furnish at such location a musical instrument and such mechanical reproducing and playback instruments as may be necessary or required in connection with his composition.

Article 16 Flight Insurance

Producer will provide a minimum coverage of $20,000 flight insurance for each composer who travels by airplane, at the direction of the Producer, during his employment. Composer shall be permitted to fill out a form specifying a beneficiary. Such form shall be filed with the designated representative of the Producer.

Article 17 Conciliation Committee

(a) Each Producer and the Guild will set up a Permanent Conciliation Committee consisting of six (6) members selected as follows:

(1) The Guild will promptly designate three (3) members in good standing and as soon as so designated, and in no event later than fifteen (15) days after the execution of this agreement, will in writing notify

the Producer for which such Committee is organized of the names of the designees. The Guild may designate separate representatives for each Producer signatory, but need not do so.

(2) Each Producer will promptly designate three (3) representatives and as soon as so designated, and in no event later than fifteen (15) days after the execution of this agreement, will in writing notify the Guild thereof. Each Producer signatory hereto may designate its own separate representatives or it may designate those named by any other Producer or Producers signatory hereto. If Producer is a member of the Association of Motion Picture and Television Producers, Inc., such representatives may be appointed by said Association.

(3) The Producer and the Guild may, from time to time, make substitutions for any of their representatives by notice to the other.

(b) The Conciliation Committee will be maintained at all times during the term of this agreement. Promptly after the Committee has been constituted it shall select a chairman and vice-chairman whose terms of office shall be eighteen (18) months. During the first eighteen (18) months of the term hereof the chairman and vice-chairman of the Committee shall be representatives of the Guild and during the second eighteen (18) months of the term hereof the chairman and vice-chairman shall be representatives of the Producer. In the absence of the chairman, the vice-chairman shall act in his stead.

(c) All meetings of the Conciliation Committee and of the Board of Arbitration referred to in Article 18, shall be held in Los Angeles, California; provided, however, that the same shall be held in New York City, New York, if the difference or dispute in question arises out of the composer's performance in New York on a television program series regularly produced in New York and grievance procedure is commenced while such series continues to be produced in New York.

Article 18 Conciliation and Arbitration Procedure

(a) Steps:

Step One - Prior to submitting to conciliation and arbitration any matter properly a subject of conciliation and arbitration hereunder, an authorized representative of the Guild and an authorized representative of the Producer will in good faith attempt to settle and adjust the difference or dispute. If such representatives fail to settle or adjust the difference or dispute within seven (7) days after the matter was first brought to the attention of the party not making the claim, either party may take the matter to conciliation under Step Two by serving written notice thereof containing a statement of all matters to be submitted to the Conciliation Committee upon the other party and the chairman of said Committee.

Step Two - Conciliation: The chairman of the Conciliation Committee shall within forty-eight (48) hours (excluding Saturdays, Sundays, and the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas) after receipt of the written notice referred to in Step One, call a meeting of the Committee by written notice served upon each of its members with a copy of the notice served by the party demanding conciliation attached thereto.

The chairman shall call said meeting for a date no later than fifteen (15) days after the date of call. The Committee shall meet on the date called unless such date is continued by action of the chairman and one other member of the Committee who is a representative of the other appointing party and shall consider and act upon all matters properly submitted to it and shall not consider or act upon any unrelated matter. If a decision permitted hereunder is concurred in by any four (4) members of the Committee, the same shall be the decision of the Committee and shall be final and binding upon the parties to the proceeding, and any interpretation of this agreement made in such decision shall also be binding on the composer or composers involved. The decision of the Committee may include any appropriate award permitted hereunder including damages, subject to the limitations set forth in Article 19. If the Committee shall fail to meet and commence hearings or deliberation upon any matter submitted to it upon the date designated as above provided for such meeting or within a period of fifteen (15) days from the time of such call, whichever is the later, or if four (4) members of the Committee shall fail to concur in a decision within fifteen (15) days after first hearing unless otherwise mutually agreed upon, or if hearing is waived by both parties hereto, or in any event if such dispute is not settled by the Committee within thirty (30) days after receipt by the Chairman of the submission referred to in Step One, then either party hereto may, subject to the provisions of Articles 18 and 19 hereof, submit such matter to arbitration. Such submission shall be made by written notice, requesting such arbitration, delivered to the other party hereto, and in such event arbitration thereof shall be had in the manner and to the extent provided by Articles 18 and 19 hereinafter set forth.

Step Three - Arbitration

(i) The party seeking arbitration shall set forth in its notice the particulars of its claim and advise the other party of the identity of its arbitrator selected by it. Within seven (7) days thereafter the other party shall designate its own arbitrator. The two (2) arbitrators so selected shall mutually agree upon a third arbitrator and failing to do so within seven (7) days after designation of the second arbitrator, the third arbitrator shall thereupon be chosen by lot from the authorized list of arbitrators provided for herein. If the party upon which the demand for arbitration is served fails to select its arbitrator within the time limit provided herein, the other party may cause an arbitrator to be appointed for such party in the manner provided by the Code of Civil Procedure of the State of California and may seek to compel arbitration, or may proceed upon its claims in their entirety in a court of law or equity, as it desires. If the party upon which the demand for arbitration is served asserts that the controversy or any part thereof is not arbitrable, or that the Board of Arbitrators has no jurisdiction of the controversy or any part thereof, or fails to participate in the arbitration, the other party may seek to compel arbitration, or may proceed upon its claims in their entirety in a court of law or equity, as it desires. If the Board rules it has no jurisdiction over the dispute, then each party is relieved of its obligation to further delay taking any action at law or in equity which it may desire to take.

Nothing herein contained shall be deemed to preclude a party asserting an issue of non-arbitrability or lack of jurisdiction from obtaining determination by a court of such issue under applicable law.

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(ii) Except as otherwise provided in this agreement a majority of the three (3) arbitrators, or by consent of the parties hereto, the third arbitrator acting alone may make any appropriate award, permitted hereunder, including damages, subject to the limitations set forth in Article 19, and such award shall be final and binding upon the parties to the proceeding, and any interpretation of this agreement made in such award shall also be binding on the composer or composers involved.

(iii) All arbitrators selected by the parties hereto may be interested persons but not personally or directly interested in the matter in dispute. The third arbitrator shall be a disinterested person.

(iv) If an arbitrator cannot serve, a substitute shall be selected in accordance with the provisions of (i) above.

(b) Hearing Procedure.

The Conciliation Committee and the Board of Arbitration shall adopt such rules of procedure and conduct their proceedings in such manner as they shall determine to be proper provided, however, that in any event each party to any conciliation or arbitration shall be afforded a reasonable opportunity to present evidence and argument to the Committee or the Board, as the case may be.

All hearings, deliberations and proceedings of the Board of Arbitration and the Conciliation Committee hereinabove mentioned shall be closed to the public and shall be absolutely privileged. Only members of the Guild and Producers signatory hereto and their authorized representatives or witnesses called may attend. All communications to and from the Board of Arbitration or the Conciliation Committee shall likewise be absolutely privileged.

The authorized list of arbitrators approved by the parties hereto is as follows:

Ben Aaron	Dean Richard Maxwell
Seymour Bricker	Addison Mueller
Arthur Carstens	Spencer Pollard
Dean Orrin D. Evans	Thomas T. Roberts
Sidney Justin	Murray Schwartz

Such list shall be revised by mutual consent from time to time.

(c) Time Limits:

(1) Proceedings under this Article 18 shall be commenced no later than eighteen (18) months after the grieving party has obtained knowledge of the facts upon which the claim is based.

(2) If proceedings under this Article 18 are not commenced within the time period specified in (1), such grievance shall be deemed to be waived. All time limits provided in this article may be extended by mutual written agreement of the parties to the difference or dispute.

(d) Costs.

Each party shall pay the costs of its members of the Conciliation Committee and the Board of Arbitration. The fees and expenses of the third arbitrator (unless otherwise provided by the Board) and the cost of a court reporter or a transcript (if ordered by the arbitrator), shall be shared equally. All other costs and expenses of conciliation or arbitration shall be borne by the party incurring the same.

(e) Award:

The award of the Committee and the Board of Arbitration (or, if agreed to by the parties, of the third impartial arbitrator) shall be in writing and shall be limited in subject matter and remedies as provided in this agreement.

(f) Parties:

In any conciliation or arbitration hereunder only the Producer and the Guild shall be parties except that in any conciliation or arbitration pursuant to subsection (a) (3) of Article 19 the Guild and the composer or composers involved shall be jointly a party, and may be represented by joint counsel.

Article 19 Matters Subject to Conciliation and Arbitration

(a) Except as otherwise provided in this Article 19, the following matters shall be submitted to conciliation and thereafter to arbitration as herein provided, and no other matters may be submitted to conciliation or arbitration:

(1) Any difference or controversy between the Guild and the Producer concerning the interpretation of any of the terms of this agreement and the application and effect of such terms as determined by an interpretation thereof;

(2) Any alleged default or breach of any of the terms or provisions of this agreement by the Guild or Producer, except that violations of credit provisions, to the extent they are arbitrable, shall be subject to the following conditions and limitations:

If the Committee decides or the Board awards that any such credit provision has been violated the Committee or Board shall have jurisdiction only to make a prospective decision or award and shall have no jurisdiction to award damages, penalties, or any monetary amount, or to require the Producer to change or redo any film titles. No award in any conciliation or arbitration determining a question as to credits shall affect or be used or be admissible in any other action or proceeding of any nature whatsoever, but any court of competent jurisdiction may confirm, set aside or modify any conciliation or arbitration award hereunder in any proceeding brought for such purpose in accordance with applicable law.

(3) Any claim by the Guild and a composer or composers on the one hand against the Producer on the other hand for unpaid compensation (hereinafter referred to as "salary") under the composer's or composers' individual employment agreement with the Producer, excluding, however, any claim not related to his or their employment as a composer or composers and subject to the following conditions and limitations:

(i) Conciliation and arbitration proceedings shall be initiated by the Guild on behalf of the composer. The Conciliation Committee and Arbitration Board shall not have jurisdiction to consider any unpaid salary claim which exceeds a sum equal to double the minimum rates provided in Article 20.

If the unpaid salary claim exceeds said sum, said claim may nevertheless be submitted to conciliation and arbitration, but by such submission the Guild and the composer whose claim is involved thereby shall waive and shall have no further claim or right with respect to any amount by which the unpaid salary involved exceeds the sum of double minimum, provided, however, that nothing contained in this sentence shall be construed to constitute a waiver of any rights under Article 18 (c) (i).

(ii) Claims for unpaid salary hereunder cannot be split and the double minimum rates limitation cannot be avoided by commencing more than one (1) separate conciliation or arbitration proceeding with respect to unpaid salary.

(iii) In any conciliation or arbitration proceeding with respect to a claim for unpaid salary, the Producer may, but need not, assert any and all defenses, counterclaims and set-offs, including any defenses based on a claim of suspension or termination. In any arbitration proceeding with respect to a claim for unpaid salary, the Producer shall assert any and all counterclaims and set-offs relating to the same salary dispute, provided, however, that if the amounts claimed by the Producer in the conciliation or arbitration exceed the sum of double minimum rates the Producer shall have the option of submitting all such counterclaims or set-offs to conciliation and (whether or not submitted to conciliation) to arbitration or to institute an action at law or in equity with respect to such counterclaims or set-offs. Nothing contained in this paragraph shall be construed to constitute a waiver of any rights or obligations under Article 18 (c)(i). Producer's rights and obligations to raise defenses, counterclaims and set-offs shall be subject to the provisions of subsection (a) (4) of this Article 19.

The institution of any such action by the Producer shall not stay any arbitration proceeding brought by the Guild and composer for unpaid salary as above provided, nor shall any such conciliation or arbitration proceeding stay any action instituted by the Producer upon any matter Producer is not required to submit in arbitration as a set-off or counterclaim, whether or not such action is instituted prior to the submission by the composer of the unpaid salary claim to conciliation and arbitration.

(iv) If the claim for unpaid salary arises out of services rendered by a composer in connection with one (1) or more but not all of the motion pictures in connection with which the composer is to render services under his individual employment agreement, the Committee and Board shall have no jurisdiction to determine or affect any claim or claims relating to any services in connection with any motion pictures other than the motion picture or motion pictures as to which the unpaid salary claim is asserted unless a defense, set-off or counterclaim is asserted with respect to such other motion picture or motion pictures.

(v) Any decision made or award rendered in conciliation or arbitration pursuant to this subsection (3) shall insofar as any payment of money is concerned, be limited to deciding or awarding what amount, if any, is due the composer from the Producer on account of unpaid salary, to the limit specified, and what amount, if any, is due the Producer from the composer on account of any set-off or counterclaim asserted by the Producer in such conciliation or arbitration.

(vi) If a claim for unpaid salary under an individual employment agreement is submitted to conciliation or arbitration, any claim of a breach or default of this agreement arising out of or connected with said claim for unpaid salary must be submitted for conciliation and arbitration together with the claim for unpaid salary, and failure to so submit such claim shall constitute a waiver of any and all rights to assert such claim thereafter.

(4) Except as hereinabove in Article 18 (a) and subsection (a) (3) of this Article 19 provided, it is expressly understood and agreed that there is to be no conciliation or arbitration of any individual disputes between the Producer and any composer and that no determination or decision made by the Conciliation Committee or by arbitration, as herein provided, shall affect the rights of the Producer as against any composer nor the rights of any composer as against any Producer, but shall only control and be binding upon the Producer and the Guild in relation to their rights as against each other. Controversies under individual employment agreements involving (i) Producer's rights of suspension and termination, (ii) Producer's right to seek or obtain injunctive relief or specific performance, (iii) any of the warranties or grants of rights made by the composer under such individual employment contract, or (iv) any of the rights of the Producer to any literary or musical material, shall not be subject to conciliation or arbitration and any decision in conciliation or award in arbitration purporting to determine or affect any of the aforementioned matters shall, to that extent, be of no force or effect whatsoever, provided, however, that if the Producer asserts in any conciliation or arbitration any defense, counter-claim or set-off involving or based upon any claim of suspension or termination, the same shall be determined in such conciliation or arbitration proceeding.

(5) The Conciliation Committee and the Board of Arbitration shall have jurisdiction to determine only such claims or controversies as are submitted for conciliation or arbitration in accordance with Article 18 hereof, subject to the limitations upon the powers of said Committee and Board under this Article 19. Neither the Committee nor the Board shall have the power or the authority to reform, amend or extend the express terms and provisions of this agreement or to reform, amend or extend the express terms and provisions of any individual employment agreement between the Producer and any composer.

(b) Court Proceedings

(1) Nothing contained in this agreement shall limit the rights of the Guild or of any composer to assert any and all appropriate legal and equitable rights and remedies to which the Guild or such composer is entitled in courts of competent jurisdiction with respect to breaches of Article 6 of this agreement for composing credit, subject, however, to the following conditions and limitations with respect to the Guild:

(i) If the Guild commences any action or proceeding in court with respect to any such alleged breach prior to the submission of the matter to conciliation or arbitration hereunder, then the Guild may not submit such matter to conciliation or arbitration and neither the Committee nor the Board shall have any jurisdiction to consider the alleged breach of such credit provision.

(ii) If the Guild commences any action or proceeding in court with respect to any such alleged breach after the submission of the matter to conciliation or arbitration hereunder, then the only right and remedy which the Guild shall have available to it in any such court action or proceeding shall be a recovery of such damages as the Guild may have suffered by reason of such breach. In such event, the conciliation or arbitration and the action or proceeding in court may both proceed at the same time.

(iii) Any such court action or proceeding with respect to such grievance must be commenced by the Guild, if at all, within the eighteen (18) month time period specified in Article 18 (c) hereof.

(2) With respect to unpaid salary claims which are then arbitrable pursuant to the provisions of this agreement, the composer, at his option, need not proceed by conciliation and arbitration but instead may proceed to institute an action at law or equity with respect to such claims prior to a decision in conciliation or the submission of such claim to arbitration. Provided, however, that nothing contained in this paragraph shall be construed to constitute a waiver of any rights under Article 18(a)(i).

(3) Nothing contained in this agreement shall impair or affect or limit the right of the Producer, the Guild or any composer covered by this agreement to assert and exercise any and all appropriate legal or equitable rights or remedies to which such Producer, Guild or composer is entitled in any court of competent jurisdiction as to any matter which is not made subject to conciliation and arbitration pursuant to this Article 19. Nor shall anything contained in this agreement in any way affect the right of the Producer to seek or obtain injunctive relief or specific performance with respect to any individual employment agreement with a composer, or in any way affect any rights of the Producer with respect to the warranties and grants of right made by a composer under an individual employment agreement, or in any way affect the Producer's right to suspend or terminate a composer under an individual employment agreement, except as provided in Paragraph (a)(4) above.

(4) Nothing herein contained, however, shall preclude any court of competent jurisdiction from confirming, setting aside or modifying any conciliation or arbitration award hereunder in any proceeding brought for any such purpose in accordance with applicable law. The Guild shall have the right to conciliate and arbitrate a claim of the Guild of a default or breach by the Producer of any of the terms or provisions of this agreement, including a failure to pay minimum compensation, regardless of whether or not such claimed default or breach may also involve a breach by the Producer of a contract of employment, and such proceeding shall not affect the right of the composer to pursue his own remedies at law or in equity, except as limited by the provisions of this agreement.

Article 20 Minimum Compensation

(a) Definition of a qualified composer and song writer.

(1) A qualified composer of underscoring is a composer who has screen credit for one feature length picture, three one-half (1/2) hour or one one-hour (1) or more in length television motion picture, or 52 weeks of employment in the motion picture industry, as a composer of underscoring.

(2) A qualified song composer is a composer who has two published songs or who composed two separate songs each of which is completely contained in a motion picture produced and released in the American motion picture industry or who has had 52 weeks of employment in the American motion picture industry as a composer of either or both song music or song lyrics.

(b) Wage Scale Minimum Compensation.

(1) There are no minimum compensation requirements with respect to unqualified composers.

(2) The minimum compensation per week for a qualified composer for composition only, shall be:

	Television Motion Pictures	Theatrical Motion Pictures
Term contract:	$357.50	$393.25
Week to week	$385.00	$423.50

The above salary shall commence and apply when an assignment is made under the Producer's direction and control. The above television weekly rate shall apply in term or week-to-week employment in any week in which no work hereunder is performed in a theatrical motion picture, in any week in which such work is performed in both theatrical and television motion pictures the theatrical motion picture rate will apply for that week. For these purposes, a term contract is a personal service contract for a term of at least ten out of thirteen weeks or any like ratio for a longer period. A week-to-week contract is a personal service contract for a a term of less than ten out of thirteen weeks. A composer employed on a weekly basis, may be terminated at any time after one week.

If any composer under a week-to-week or term contract shall render services after the expiration of the period for which his specified compensation is provided in the employment contract and no additional

amount is specified for such additional period, then in such event the composer shall receive the weekly rate specified in such contract for each week, or, for purpose only of prorating days worked in a partial workweek (of less than six (6) days), one-fifth (1/5) for each such a day worked during which the composer shall render such additional services. In any week of employment when the Producer may under this agreement employ the composer for less than one full week (i.e. after one week or after the term of the agreement), if the composer shall render services in composition and also other services not covered by this agreement his minimum compensation for composition shall be prorated in proportion to the amount of time required by Producer for composition.

(3) In the alternative, when the employment for composition, excluding songs, is for television films only, and it is non-exclusive employment, the minimum compensation shall be:

a) Not less than $192.50 for a half-hour show.
b) Not less than $385 for a one-hour show.
c) Not less than $550 for a one and one-half hour show.
d) Five minutes or less of new music, not less than $100.

The above rates of $192.50 for a half-hour show, $385 for an hour show, and $550 for a one and one-half hour show shall be applicable where more than five minutes of new music is composed for a program.

Where more than five minutes of new music is composed and more than one composer is employed, the combined payments to such composers shall be not less than $200.00 for a half-hour show or $385 for an hour show. In no event shall a composer who composes five minutes or less of new music, under such circumstances, be paid less than $100 if he composed "a five minute or less fragment."

(4) The minimum compensation for employment for the composition of songs shall be governed by the theatrical rate provisions of (b) (2) of this article only.

(5) Any amounts paid to the composer in excess of the minimum compensation, as provided above, may be applied to any other payments (except royalties provided for by Article 21))required under this agreement.

(6) Theatrical Exhibition of Television Films:

In the event a television motion picture or pictures containing music composed on or after the effective date of this agreement, under the provisions of Article 20 (b)(3) above, is exhibited theatrically (as one or in combination) Producer shall pay to the composer or composers of such music, so used, in such exhibition, the following applicable single amount for an unlimited number of such exhibitions:

The amount, if any, that (i) $385 exceeds the compensation paid such composer or composers for a half hour show so used; or (ii) $770 exceeds the compensation paid such composer or composers employed for a one hour show so used; or (iii) $1,100 exceeds the compensation paid such composer or composers employed for a one and one-half hour show so used; or (iv) $40 exceeds the compensation paid such composer or composers employed for each minute of a five minute or less fragment so used.

If the Producer shall sell, assign, transfer or otherwise dispose of its theatrical exhibition rights in any such television film or shall license the distribution rights to such theatrical exhibition, Producer shall be responsible, or shall require its purchaser or licensee to become responsible for compliance with this provision relating to the initial theatrical exhibition of the film. Upon obtaining such agreement from such purchaser or licensee, Producer shall be relieved of further obligation hereunder, provided Producer sends to the Guild, within 30 days thereafter, a copy of such assumption agreement.

(7) Unused Music:

With respect to theme music or songs intended to be used in a television pilot film, if such pilot is not made within three (3) years after the composition of the theme music or song is completed, the composer of such theme music or song will have a twelve-month option period, commencing with the end of such three-year period, within which to purchase back all rights in such theme music or song, at the Producer's cost. If the composer does not exercise such option in such option period, such option shall thereupon be terminated. If Producer uses such theme music or song in a pilot or otherwise exploits the theme music or song before the composer has completely exercised his option in such option period, the composer's right to such option shall thereupon terminate. If the composer so exercises such option, within such option period, Producer nevertheless shall have the non-exclusive right to use such theme music or song in the particular pilot for which the theme music or song was composed, or in any series based on such pilot.

With respect to songs, if the song intended to be used in a motion picture, other than television pilot films, is not used or otherwise exploited, within five (5) years after the composition of the song is completed, the composer will have a thirty-six month option period commencing with the end of such a five-year period within which to purchase back all rights in such song, at the Producer's cost. If the composer does not exercise such option in such option period such option shall thereupon be terminated. If Producer uses such song in a motion picture, or otherwise exploits it, before the composer completely exercised his option in such option period the composer's right to such option shall thereupon terminate. If the composer so exercises such option, within such option period, Producer nevertheless shall have the non-exclusive right to use such song in motion pictures.

Costs shall be deemed to be the amount Producer paid to the composer for such musical composition, plus fringe benefits and taxes. The composer shall receive back only the music as written in the manuscript delivered to the Producer.

Article 21 Publication Royalties

Should the Producer, or any subsidiary or affiliated company, or any assignee or licensee of Producer, exploit the music or musical composition (hereinafter referred to as the "composition") then the Producer, or such subsidiary or affiliated company, or such assignee or licensee, shall pay directly to the composer an amount of royalty with respect to such composition not less than the following, and Producer's contract with such subsidiary or affiliated company, or assignee or licensee, shall so require and if Producer's contract does so provide then Producer shall not be responsible for payment of the royalties hereunder:

(a) Five cents (5¢) per copy in respect of regular piano copies sold and paid for in the United States and Canada.

(b) Fifty percent (50%) of all net sums received by the publisher in respect of regular piano copies, orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and/or instruments, and/or other copies of the composition sold in any country other than the United States and Canada; provided, however, that if the publisher should sell such copies through, or cause them to be sold by, a subsidiary or affiliate or any assignee or licensee which is actually doing business in a foreign country, then in respect of such sales, the publisher shall pay to the composer not less than ten percent (10%) of the wholesale selling price in respect of each such copy sold and paid for.

(c) Ten percent (10%) of the wholesale selling price (after trade discounts if any) of each copy sold and paid for in the United States and Canada, or for export from the United States, of orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and/or instruments, and/or other copies of the composition (other than regular piano copies).

(d) (i) If the composition, or any part thereof, is included in any song book, song sheet, folio or similar publication issued by the publisher containing at least four (4), but not more than twenty-five (25) musical compositions, the royalty to be paid by the publisher to the composer shall be an amount determined by dividing ten percent (10%) of the wholesale selling price (after trade discounts, if any) of the copies sold, among the total number of copyrighted musical compositions included in such publication. If such publication contains more than twenty-five (25) musical compositions, said ten percent (10%) shall be increased by an additional one-half percent (1/2) for each additional musical composition.

(ii) If, pursuant to a license granted by the publisher to a licensee not controlled by or affiliated with it, the composition, or any part thereof, is included in any song book, song sheet, folio or similar publication, containing at least four (4) musical compositions, the royalty to be paid by the publisher to the composer shall be that proportion of fifty percent (50%) of the gross amount received by it from the licensee, as the number of uses of the composition under the license and during the license period, bears to the total number of uses of the publisher's copyrighted musical compositions under the license and during the license period. Such royalties shall be computed and paid within thirty (30) days after the expiration of the term of each license, but if any such license term is in excess of one year, such royalties shall be computed and paid annually.

(iii) In computing the number of the publisher's copyrighted musical compositions under subdivision(ii) hereof, there shall be excluded musical compositions in the public domain and arrangements of musical compositions in the public domain if no royalties are payable with respect to such arrangements by the publisher.

(iv) Royalties on publications containing less than four (4) musical compositions shall be payable at regular piano copy rates.

(e) As to "professional material" not sold or resold, no royalty shall be payable.

(f) Fifty percent (50%) of all net sums actually received by the publisher in respect of any licenses (including statutory royalties) authorizing the manufacture of parts of instruments serving to mechanically reproduce the composition; or to use the composition in synchronization with sound motion pictures produced by anyone other than: (i) the Producer, its subsidiary, and affiliated companies; (ii) any company using the composition in a motion picture financed substantially by or to be distributed by the Producer; and (iii) the producer for whom the composition was originally composer, and its subsidiary and affiliated companies; or to reproduce it upon electrical transcription for broadcasting purposes; except that the composer(s) shall not be entitled to any share of the monies distributed to the publisher by any performing rights society anywhere in the world, or other source, which makes a distribution to composers either directly or through another performing rights society or other person, company, society, association or organization.

(g) If the publisher administers licenses authorizing the manufacture of parts of instruments serving to mechanically reproduce said composition, or the use of said composition in synchronization or in timed relation with sound motion pictures produced by anyone other than: (i) the Producer, its subsidiary, and affiliated companies; (ii) any company using the composition in a motion picture financed substantially by or to be distributed by the Producer; and (iii) the producer for whom the composition was originally composed, and its subsidiary and affiliated companies; or its reproduction upon electrical transcriptions, or any of them, through an agent, trustee or other administrator acting for a substantial part of the industry and not under the exclusive control of the publisher (hereinafter sometimes referred to as licensing agent), the publisher in determining his receipts, shall be entitled to deduct from gross license fees paid by the licensees, a sum equal to the charges paid by the publisher to said licensing agent.

(h) "Publisher" as used in this Article 21 shall mean the original Publisher.

The foregoing rates shall apply only in cases in which all of the music and lyrics of the composition have been composed by one composer, or in cases in which a musical composition has been composed for which no lyrics have been written.

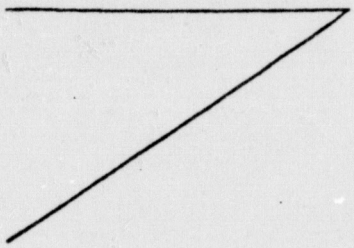
As to songs, if one person composes the music and another the lyrics, the foregoing rates shall apply, but one-half shall be allocated to the composer of the music and one-half to the author of the lyrics (no allowance being made for the title). If there shall be more than one composer or more than one lyricist, then they shall agree between themselves upon the division of their half of the above royalties, but in the absence of such agreement, their half shall be divided equally between them.

The royalties hereinabove provided for shall be payable only in connection with compositions originally created by the composer, it being agreed that no royalties shall be payable with reference to arrangements, orchestrations, translations or other adaptations or modifications of compositions written by others.

No royalties shall be payable for any uses made by the Producer or by the independent producer for whom the composition was originally composed (or by its or their associated, affiliated, parent or subsidiary corporations or by any persons, firms or other corporations with whom or with which any of said corporations may have contracts or arrangements for the production, performance, television, exhibition or distribution of motion pictures) in motion pictures (theatrical or television) or in connection with any advertising, publicising or exploitation thereof. Nothing in this agreement shall be construed to obligate the Producer or its licensees or assigns to publish, record, reproduce or otherwise exploit any music or musical composition.

Article 21A Recognition of Agreement

The Guild agrees that it will take proper steps to provide that its by-laws carry this agreement into effect and that, during the term of this agreement, it will not maintain or adopt any articles or by-laws or any rules or orders which will be in conflict with this agreement. The Guild shall cause its by-laws to provide that each of its members shall be bound by the provisions of this agreement. The Guild represents and warrants that at all times during the term hereof it will have exclusive jurisdiction over the matters and procedure necessary to carry out the purposes and intent of the foregoing provisions of this Article 21A and over all other covenants and agreements to be kept or observed by the Guild pursuant to this agreement. The Producer will not either alone or in concert with any other Producer signatory to a similar agreement with the Guild take any action of any kind that will interfere with the performance of this agreement on the part of the Producer or violate the provisions of this agreement.



Article 22 Agreement Binding Upon Whom

This agreement shall be binding upon the Producer and its subsidiaries in which it has a fifty percent (50%) or more financial interest and all parties who by reason of mergers, consolidations, reorganizations, sale, assignment or the like shall succeed to or become entitled to a substantial part of the business of Producer.

Producer agrees to notify the Guild within seven (7) days after it executes an agreement with any person, firm or corporation (not covered by the provisions of the preceding paragraph) for the use of its studio for the production of a theatrical or television motion picture. Producer further agrees to notify the Guild within fourteen (14) days after it executes an agreement in the County of Los Angeles, California, with any person, firm or corporation (not covered by the provisions of the preceding paragraph) for the production of a theatrical or television motion picture in the United States where Producer's studio is not used for the production of such picture in the United States, such notice to the Guild shall contain the name and address of such person, firm or corporation as well as the name of the person who signed the agreement on behalf of such person, firm or corporation. An inadvertent failure on the part of the Producer to comply with the provisions of this paragraph shall in no event constitute a default by the Producer or a breach of this agreement.

Article 23 Motion Pictures To Which Agreement Not Applicable

It is understood that the provisions of this agreement shall not apply to newsreels, shorts, advertising shorts, trailers, travelogues, commercial films or news or sports commentations.

Article 24 Geographical Application of this Agreement

Notwithstanding anything in the contrary herein contained, it is specifically understood that this agreement shall apply to composers residing in the United States whose contracts of employment were executed within the continental limits of the United States (including Alaska and Hawaii), regardless of the place of performance of services thereunder, or to any composers who perform their services in the United States (including Alaska and Hawaii), regardless of the place their contracts were executed, and shall apply only to such contracts of employment.

Article 25 Minimum Terms

The terms of this agreement for the benefit of the composer are minimum terms; nothing herein contained shall prevent any composer from negotiating and contracting with any Producer for better terms for the benefit of such composer than are herein provided. Only the Guild shall have the right to waive any of the provisions of this agreement on its own behalf or on behalf of or with respect to any individual composer. Such waiver shall be in writing.

Article 26 Producer-Composer Cooperative Committee

Within fifteen (15) days after the execution of this agreement there shall be established a committee to be known as the Producer-Composer Cooperative Committee, composed of not less than sixteen (16) members representative of the Producer and the composer, eight (8) of whom shall be named by the Producer signatories hereto and eight (8) named by the Guild. It is understood that any group of seven (7) or more Producer signatories hereto may establish a separate committee for the purposes hereof, and the Guild will name members to meet with each such committee. Such committee or committees shall meet at least once every sixty days. Deliberations shall be wholly informal and any and all matters affecting the operation and application of this contract, and the promotion of a harmonious Producer-Composer relationship shall be fully and freely discussed. Every effort shall in good faith be made by all members of the committee to prevent abuses from arising under this agreement, to eliminate inequities and to promote cooperation between and mutual understanding of the problems of employer and employee.

Article 27 Jurisdictional Disputes

The Guild agrees to cooperate in good faith with the Producer and with other guilds and organizations representing employees of the Producer in working out a method for the determination of jurisdictional disputes without work stoppages.

Article 28 Pension Plan

Producer and the Guild are parties to, and bound by the provisions of the "Motion Picture Industry Pension Plan" (hereinafter referred to as the "Pension Plan") made as of October 26, 1953, with respect to the employees covered hereunder.

In accordance with Article III, sections 2 and 3, of the Pension Plan and subject to the provisions of Article XV of such Pension Plan, relating to private retirement plans, the Producer shall, for the period commencing with July 1, 1967, and for the balance of the term of this agreement pay into the Pension Plan a total of ten dollars and ninety-six cents ($10.96) for each full workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer on or after July 1, 1967, under the terms of this agreement, excluding layoffs, suspension or vacations, or two dollars and twenty-three cents ($2.23) for each week day worked or guaranteed in a fractional workweek.

In accordance with Article III, sections 4 and 5, of the Pension Plan and subject to the provisions of Article XV of such Pension Plan, relating to private retirement plans, every employee covered by this agreement shall, for the period commencing with July 1, 1967, and for the balance of the term of this agreement pay into the Pension Plan six dollars and ninety-one cents ($6.91) for each full workweek guaranteed such employee by Producer or for each full workweek such employee works for Producer on or after July 1, 1967, under the terms of this agreement, excluding layoffs, suspensions or vacations, or one dollar and forty-one cents ($1.41) for each such weekday worked or guaranteed such employee in a fractional workweek. On and after July 1, 1967, Producer shall deduct daily or weekly from the compensation of such employees, as the case may be, the amount of such contribution due from such employee, as above provided, which deduction shall be paid by Producer into the Pension Plan on behalf of such employee as the employee's contribution to the Pension Plan, as herein required.

Contributions with respect to employment on a half-hour television show shall be computed on the basis of 27 hours employment; a one hour television show shall be computed on the basis of a full workweek; per minute employment shall be computed on the basis of one day's employment.

The above contributions are in accordance with the present pattern of contributions by Employers and Employees required under the Pension Plan. In the event the present pattern of contributions under the Pension Plan should be changed during the term of this agreement, then the rate of contributions as provided herein shall automatically be changed to conform to such new pattern and rate of Employer and Employee contributions established under such Pension Plan.

Such money paid by Producer into the Pension Plan, shall not constitute nor be deemed to be wages due to the individual employee subject to this agreement, nor shall said money paid into the Pension Plan, in any manner be liable for or subject to the debts, contracts, liabilities or torts of such employees.

Producer shall be obligated to make its contribution to the Pension Plan, for any such respective employee, as provided above, only as, if and when such respective employee has contributed to the Pension Plan the amount required from him, as provided above.

Article 29 Industry Pension Plan Retirees Health and Welfare Coverage

Producer shall for the period commencing July 1, 1967, and for the balance of the term of this agreement, pay into the Industry Pension Plan through its Administrator, as Agent for transmittal to the Industry Health and Welfare Fund, the following:

One dollar and seventy-six cents ($1.76) for each full workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer, on or after July 1, 1967, under the terms of this agreement, excluding layoffs, suspensions, or vacations, or thirty-six cents (36¢) for each such weekday worked or guaranteed in a fractional workweek.

Contributions with respect to employment on a half-hour television show shall be computed on the basis of 27 hours employment; a one hour television show shall be computed on the basis of a full workweek; per minute employment shall be computed on the basis of one day's employment.

The above contributions are in accordance with the present pattern of such contributions by employers to the Industry Pension Plan Administrator. In the event the present pattern of such contributions to the Industry Pension Plan should be changed during the term of this agreement, then the rate of contributions as provided herein shall automatically be changed to conform to such new pattern and rate of employer contributions as indicated by such Industry Pension Plan.

The money received by the Administrator of the Industry Pension Plan from such payment, as above provided, shall be kept separate and apart from any funds of the Industry Pension Plan, and shall be paid to the Industry Health and Welfare Fund upon demand by the Health and Welfare Fund. The Health and Welfare Fund shall establish a special reserve fund into which such money shall be placed for the purpose of providing, under proper conditions, for such Health and Welfare coverage as the Trustees of the Health and Welfare Fund may determine to be appropriate for the employees retired under the Industry Pension Plan.

Such money paid by Producer to the Administrator of the Industry Pension Plan for transmittal, shall not constitute nor be deemed to be wages due to the individual employees nor shall said money so paid into the Industry Pension Plan, in any manner, be liable for or subject to the debts, contracts, liabilities, or torts of such employees.

Producer shall be obligated to make such contribution to the Administrator of the Industry Pension Plan for transmittal, for any such respective employee, as provided above, only as, and if such respective employee has contributed to the Industry Pension Plan the amount, and within the time required of him, as provided above in Article 28.

Article 30 Health and Welfare Fund

Producer and the Guild agree to immediately make application to become parties to, and if accepted, to be bound by the provisions of the "Motion Picture Health and Welfare Fund" (hereinafter referred to as the "Welfare Fund") made as of October 20, 1952, with respect to the employees covered hereunder.

In accordance with Article V, sections 1 and 2, of the Welfare Fund the Producer shall, during the term of this agreement for the period commencing with July 1, 1967, and for the balance of the term of this agreement, pay into the Health and Welfare Fund a total of nine dollars and thirty-two cents ($9.32) for each full

workweek guaranteed an employee by such Producer or full workweek worked by an employee for such Producer on or after July 1, 1967 under the terms of this agreement, excluding layoffs, suspensions or vacations, or one dollar and ninety cents ($1.90) for each weekday worked or guaranteed in a fractional workweek.

Contributions with respect to employment on a half-hour television show shall be computed on the basis of 27 hours employment; a one hour television show shall be computed on the basis of a full workweek; per minute employment shall be computed on the basis of one day's employment.

The above contributions are in accordance with the present pattern of contributions by employers required under the Welfare Fund. In the event the present pattern of contributions under the Welfare Fund should be changed during the term of this agreement, then the rate of contributions as provided herein shall automatically be changed to conform to such new pattern and rate of employer contributions established under such Welfare Fund.

Article 31 Pay Television

For the purpose of this agreement "theatrical exhibition" shall be deemed to include any form of pay television.

If, during this contract, a pay television system is established in the United States and Producer releases any motion pictures on pay television (other than for test or experimental purposes) and the Guild claims that as a result thereof there has been a material increase in theatrical film rentals of such Producer, the Guild on sixty (60) days' advance written notice given thereafter, may reopen this contract as to all members of the Association of Motion Picture and Television Producers, as a group, with respect only to the adjustment of theatrical minimum rates of compensation thereafter payable. In the event the parties are unable to reach an agreement within a sixty-day period following the commencement of such negotiations, the Guild may instruct its members to withhold services with respect to the production of such motion pictures as to such members of the Association of Motion Picture and Television Producers, as a group.

Producer agrees that prior to the employment of any composer for a motion picture intended primarily for exhibition on Pay TV, other than for tests or experimental purposes, Producer shall give at least sixty days' advance notice to the Guild of such proposed employment. Producer and the Guild agree to meet within thirty (30) days from receipt of such notice for the purpose of negotiating with respect to the terms and conditions for such employment. If no agreement is reached with respect thereto within such sixty-day period, the Guild may, upon a thirty-day written notice to Producer, instruct its members to withhold services with respect to the production of such motion picture.

Article 32 Contract Services Administration Trust Fund

Producer shall for the period commencing February 1, 1965, and thereafter for the balance of the term hereof, pay to the Industry Pension Plan through its Administrator, as Agent for transmittal to the Contract Services Administration Trust Fund, the following:

Three fourths of one cent (3/4¢) for each work hour guaranteed an employee hereunder by such Producer or hour worked by an employee hereunder for such Producer on or after July 1, 1967 (on the same weekly and daily formula as the contributions paid under the Retired Employees Health and Welfare Fund).

Contributions with respect to employment on a half-hour television show shall be computed on the basis of 27 hours employment, a one hour television show shall be computed on the basis of a full workweek; per minute employment shall be computed on the basis of one day's employment.

This fund to be used for the administration of apprenticeship and other training programs within the motion picture industry; maintenance of appropriately classified and delineated seniority rosters within the motion picture industry; administration of safety programs and studies within the motion picture industry; administering and financing physical examinations in connection with any uniform industry retirement programs; and generally for the carrying on of similar such programs for the administration of other industry-wide services, studies or education.

The money received by the Administrator of the Industry Pension Plan from such three fourths of one cent (3/4¢) payment, as above provided, shall be kept separate and apart from any funds of the Industry Pension Plan, and shall forthwith be paid to the Contract Services Administration Trust Fund.

Such Trust Fund shall be administered by a Board of Trustees, who shall be appointed by the Association of Motion Picture and Television Producers, Inc.

Such money so paid by Producer shall not constitute nor be deemed to be wages due to the individual employees nor shall said money so paid be in any manner, liable for or subject to the debts, contracts, liabilities or torts of such employees.

Article 33 Significance of Titles and Sub-Titles

The headings of articles, sections and other subdivisions hereof are inserted for the purpose of convenient reference, and it is recognized that they may not adequately or completely describe the contents of the provisions that they head. Such headings shall not be deemed to govern, enlarge, limit, modify or in any other manner affect the scope, meaning or intent of the provisions of this agreement or any part or portion thereof; nor shall they otherwise be given any legal effect.

Article 34 Reports

Producer will submit written reports to the Guild on payments hereunder, for composition on television and theatrical motion pictures, except that such reporting shall not be required in the case of staff composers. Staff composers are regular employees whose duties may include services other than composing.

Article 35 Non-Discrimination

The parties mutually reaffirm their policy of non-discrimination. The Producer reaffirms its policy that no employee shall be discriminated against in employment hereunder, because of race, color, creed, sex, or national origin. The Guild reaffirms its policy of non-discrimination with respect to admission to membership and rights of membership.

Article 36 Severability

If any provision of this agreement shall, during the term hereof, be held void or unenforceable, all other provisions hereof shall continue in full force and effect.

Article 37 Indemnification

The Producer and composer may in any contract of employment include any provision for warranties and indemnification against any and all liability, judgments, recoveries, damages, costs and expenses, including attorney's fees, except that:

Composer shall not be required to warrant or indemnify with respect to any material furnished by Producer for incorporation into the composer's music in regard to originality or violation of rights of third parties, or indemnify against judgments, damages, costs and expenses including attorney's fees in connection with suits relating to such incorporated material; nor waive his right to defend himself against a claim for costs, damages, or losses arising out of settlements not consented to by composer. Producer reserves all the rights it may otherwise have against the composer.

It is not the intent of this agreement to impede or prevent the settlement of a claim under this paragraph which would bind the composer, in cases where the composer, having given warranties and indemnifications, unreasonably withholds his consent.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

COMPOSERS AND LYRICISTS GUILD OF AMERICA

By /s/ DAVID RAKSIN

The Above-Mentioned PRODUCERS, Separately and Respectively:

By /s/ CHARLES BOREN
Charles Boren

EXHIBIT 22 - LETTER DATED SEPTEMBER 3, 1953 -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

LAW OFFICE
ABRAHAM MARCUS
9250 WILSHIRE BOULEVARD
BEVERLY HILLS
CALIFORNIA
CRESTVIEW 6-3123

CABLE: MARCZIS
ABRAHAM MARCUS

NEW YORK OFFICE
SIEGEL, MARCUS, EBENSTEIN & STEIN
595 MADISON AVENUE

September 3, 1953

COPY

Mr. H. L. Walter
General Manager
The Performing Right Society, Ltd.
Copyright House
33 Margaret Street
London, W. 1, ENGLAND

Dear Mr. Walter:

Dr. Miklos Rozsa has referred to me, in my capacity as attorney for Screen Composers' Association, your letter of August 24th for reply.

Your understanding that U.S.A. composers assign their entire copyright to film producers is not in accord with the facts. While a number of the lesser known composers may do so, the more important ones generally are able to protect the performing rights in one way or another. For example, George Duning's contract with Columbia Pictures Corporation contains the following clause:

> "Section VII-13. Small Performing Rights. Notwithstanding anything to the contrary contained herein, the Employee does hereby reserve, and the Corporation does hereby grant to the Employee, the so-called 'small performing rights' except the exhibition rights. The small performing rights which the Employee is reserving to himself are those rights which he has heretofore granted to the American Society of Composers, Authors and Publishers covering the musical material hereunder. * * * The exhibition rights of the Corporation shall be subject to the rights of the various performing rights societies in countries other than the United States to collect small performing fees from exhibitors and broadcasters; provided that such right to collect small performing fees shall not operate to prevent the exhibition of any motion pictures."

EXHIBIT 22 - LETTER DATED SEPTEMBER 3, 1953 -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

Columbia Pictures Corporation includes these provisions in its contracts with composers--certainly in the contracts with all those composers represented by me.

Other forms of clauses are in use with various of the producers which are designed to protect the performing right collection system for the benefit of the composer as well as the publisher to whom the producer may assign the rights.

However, the Composers & Lyricists Guild of America, which I also represent, is seeking to obtain a collective bargaining agreement with motion picture producers on behalf of all composers. We have been attempting to negotiate a performing right reservation clause to insure for all composers (including those now unable to reserve rights) the collections of performance revenues in foreign countries. You are aware of the ASCAP anti-trust litigation which makes it impossible to collect for performances in theatres in the U.S.A., and therefore, reservation of performing rights for this country for theatres is impossible.

It would be of help in our negotiations if you would permit us to exhibit to the producers' representatives your letter which indicates the great importance of having a reservation of performing rights to the composer, rather than to rely upon the transmittal of performing rights from the producer to a publisher who in turn transmits the rights to the performing right society. Your letter so clearly supports the argument which I have been making to these representatives that for the combined best interests of both composer and producer the rights should be reserved to the composer that I think exhibition of your letter to them would give greator weight and acceptability to my argument.

Of further assistance to us would be either copies of contracts made by English composers with producers or any basic agreement on behalf of all composers with producers in England so that we could demonstrate here that the custom in England is to reserve the performing rights to the composer. Thus far the producers here have claimed that in England a situation exists which is similar to that in this country--that the more important composers are able to obtain

EXHIBIT 22 - LETTER DATED SEPTEMBER 3, 1953 -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

reservation of the rights whereas the lesser known ones assign all rights to the producer. If the contrary is true, it would be helpful if we could demonstrate it to the producers' representatives.

I would greatly appreciate your prompt consideration of this matter and reply to me.

Sincerely,

ABRAHAM MARCUS

cc: Mr. Miklos Rozsa
Mr. Leonard Zissu
Mr. Leith Stevens
Mrs. Elsa Clay

EXHIBIT 23 - LETTER DATED SEPTEMBER 1, 1961 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

same letter to: Elmer Bernstein
David Buttolph
Adolph Deutsch
Johnny Green
Bronislaw Kaper
Alfred Newman
Andre Previn
Leonard Rosenman
Miklos Rossa
Franz Waxman
Hugo Friedhofer
Alex North
George Duning
Jimmy McHugh Van Heusen
Dimitri Tiomkin

September 1, 1961

Dear Lenny: (Merrmann)

I feel that you are one of the CLGA members who would be especially interested in and gratified by the enclosed evidence that our years of patient negotiation are bearing fruit. In addition to the enclosed, we have had communications from other performing right societies; their attitude in every case is that the clause we have achieved in our agreement will redound to the benefit of all composers, everywhere.

In addition, the independent producers releasing through United Artists and the one major studio no now a member of the AMPP, Universal Pictures, have all indicated, within the last few days, their willingness to sign a minimum basic agreement similar to that with the majors.

And a final note: the Executive Board has voted a $1,000 ceiling during this first year for the 2d quarterly dues payable by members on their employment earnings under the Guild's jurisdiction.

Most sincerely,

Leith Stevens
President

encl.

EXHIBIT 24 - CLGA REPORT DATED SEPTEMBER 3, 1963 -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

CLGA's Report

Published by Composers and Lyricists Guild of America, Inc.
6782 Sunset Blvd., Los Angeles 69, Calif., OL 2-6620
292 Madison Ave., Suite 1204, New York 17, N.Y. MU 8-0565

Vol. X, Page 1 September 3, 1963

OUR FIRST CONCERT

For our Eastern members, this will be your first information on the Music from Hollywood concert we are all working on for the benefit of the Guild. It is to be held on Wednesday, September 25, at the Hollywood Bowl, and will feature the best known film and television compositions of our members, with guest stars JACK BENNY, MAHALIA JACKSON and ANDY WILLIAMS.

For our West Coast members, we're sure that all of you who will be here on September 25, have already made plans to attend the Music from Hollywood concert. Advance selling on seats is heavy, the boxes are moving out very rapidly, but we do need all your support and "talking-up" to fill those 17,000 seats.

THE CREW

The Souvenir book is well on its way towards completion, with a valiant committee hard at work on selling space. Members in charge include Jeff ALEXANDER, Director of Volunteer Activities; Sandy COURAGE, Program Director; Harold SPINA, Assistant Producer; Gene VON HALLBERG, Tickets; Irving MILLER, Publicity -- and, of course, Bobby HELFER, Music Coordinator -- Johnny GREEN, Executive Director of the program, all working with Red DOFF, Producer, and all being coordinated by Maggie (Mrs. Lyn) MURRAY, with Jill (Jeff's sprig) ALEXANDER assisting. Our wives are pitching in to support this effort, too, with telephone committees, etc.

f r o m P r e s i d e n t D a v i d R a k s i n . . .

ABOUT THOSE 2% QUARTERLY DUES

It should come as no surprise to anyone who makes his living in our profession that, as often as not, the facts of life turn out to be financial facts. Those of us concerned with the day to day operation of CLGA are never more than a phone call away from the perennial problem of the Guild's finances, which is that of a young organization with more work to do than its funds will permit. If we had no more than the normal quota of administrative and office duties to perform, our present income would scarcely suffice. But in addition to these, we find ourselves in a protracted struggle for survival, fighting to preserve the principle of payment of performance royalties on the one hand, and negotiating what is in essence a pilot contract for independent television production on the other. Either of these efforts alone would tax the capacity of the largest of guilds, yet neither may be put aside without the certainty of serious, if not irreparable, damage to CLGA and its objectives.

Few men qualify to practice our complex profession; therefore the Guild will always be small in number. This, of course, limits the income available from dues, so our Constitution therefore provides (Art. IV, Sec. 5,A) that:

> "The Board shall have the power to levy assessments upon the membership to defray the expenses of the administration of the functions of the Guild; such assessments shall be based upon a uniform percentage of the moneys earned by members for composition in the fields over which this Guild has jurisdiction."

(Continued)

2.

f r o m P r e s i d e n t D a v i d R a k s i n . . .

Our present assessment stands at 2% of moneys earned for composition (not including payment for AFM functions). This percentage applies to gross compensation, and a few members have questioned the propriety of a levy based upon gross earnings. It should be pointed out that both the Writers Guild and the Directors Guild base their assessments upon gross earnings. The Directors, with a membership roughly six times our own, and a staff of 11, exact 1% of gross earnings, with a minimum of $100 a year. The Writers, whose membership is about 10 times that of CLGA, with a staff of some 30, also ask 1% of gross earnings, and are now in the process of increasing this, as well as their $10 basic annual dues. And note well that in the case of both Guilds these assessments apply not only to employment but to residuals! And that, even for our necessarily much smaller membership, our staff is required to perform essentially the same number of separate operations.

OTHER GUILDS

But more important than these justifying figures is the plain fact that we have learned (as have the other guilds) that an assessment based on minimum scale would not begin to provide enough money to operate the Guild; even 4% on minimum scale would not suffice. It is a simple matter of alternatives, without a simple solution: shall the Guild continue the fight it has waged for ten years; shall it give up the struggle and leave employers free to pit composer against composer in today's buyer's market, and so regress to dog-eat-dog competition; or shall we curtail our activities, and if so, which ones -- which pocket do you prefer to have picked?

IT'S YOUR PICKET.

To those of us who have been with the Guild from its inception it is often disheartening to see how easily some of the members who could not be bothered to help in the early crucial moments tend to forget what the fight was about, and how some of the newer members are more willing to accept the benefits of the work of others without, at least, an equal willingness to support present efforts to secure the future of the entire membership.

Consider the small performing right, from which we derive our ASCAP and BMI royalties, and which altogether too many of us take for granted. Are you aware that until CLGA fought through its first contract with the major motion picture producers (AMPP) this right was in jecpardy? Whenever ASCAP thought we were getting too insistent upon a fairer system of payment, they would remind us that, since there was no specific reservation to the composer of performing rights in the "employment for hire" contracts we signed at the Studios, they were, if sufficiently provoked, quite willing to assume that we had no remaining rights in the performance of our music in films and television, and to forego collecting for "background music" altogether. Their inability to recognize that, by ceasing to uphold the right of the film composer to these royalties, they would also undermine the rights of any songwriters who had signed the same kind of contracts, is one of those marvels that has conditioned our response to that organization at times.

However, all this, and it would have been a disaster of no small proportion, was swept aside, for all of us, by the achievement of CLGA's Minimum Basic Agreement with the AMPP, which explicitly reserves these rights for us, and places us beyond quibbling. Which means, that you and I owe our continuing participation in royalties derived from small performing rights to CLGA, and to the men who worked hard to get that contract for us. Does it require too great an effort to measure the 2% tax against this contract and what it means? Very well: try comparing it in dollars to the ASCAP or BMI royalties you might very likely have lost if our contract had not settled that part of the issue. This is not to say that the risk is gone, for it is sure to continue as long as some bright lawyer on the other side sees a chance to do us out of our royalites. Apparently that is just what one of them does see: the name of the enemy is the "committee of over 300 television broadcasters (headed by Shenandoah Valley Broadcasters)," and the time is now.

OUR DEBT TO CLGA

(Continued)

EXHIBIT 24 - CLGA REPORT DATED SEPTEMBER 3, 1963 -
ANNEXED TO AFFIDAVIT OF SIMON ROSE

f r o m P r e s i d e n t D a v i d R a k s i n . . .

The Shenandoah Broadcasters are the spearhead of their industry's drive toward what they are pleased to call "licensing at the source." This means that you will be obliged to give the company that employs you to compose music or lyrics the right to license that work for performance in filmed TV or radio without further payment of royalties. In other words, goodbye for good to those self-same ASCAP and BMI checks we so recently established our right to, and which are such an important source of income to men whose work wears them away prematurely, with its crushing demands. Today, when taxes make it nearly impossible to provide for the future of a family, royalties have stood between many a composer and some very grim realities. And suddenly, only CLGA stands between that composer and the richly-subsidized effort to deprive him of those royalties. What is worse, the foreign collection societies (BPRS, SACEM, etc.) are already incensed at having to remit so much money to U.S. composers than our impaired system of royalties returns to them; and there is a well-founded fear that cutting off their last remaining source of income from the U.S. would produce reprisals. In other words, goodbye European royalties, too. Unless . . . .

"LICENSING AT THE SOURCE"

Unless CLGA can prevent it. And, with your help, CLGA can. For in the pilot contract which we are now negotiating with Revue Studios we are together preparing a performing right clause that will do just that. In brief, it reserves to the composer the same rights we have already established with the Majors, although in a more favorable form of agreement. But, also, it provides that, if the courts should prevent ASCAP and BMI from collecting for performances in television and radio, the small performing right reverts entirely to the composer, with the proviso that he will transfer the producer's share of this right to a publisher of the producer's choice. It is this safeguarding clause that has made our progress in negotiations appear so slow. But the complexities must be ironed out and, if, in the end, we reach agreement on a clause that will protect us without impairing the producers' legitimate position, it will be as great an achievement as any guild has made.

TV NEGOTIATIONS

Back to the big question: what do we do? Do we give all this up because a few of our members can't get it through their heads, or through their business managers' heads, that 98% of something substantial is a lot better than 100% of a lot less? That CLGA, by its performing right clause in the AMPP contract, established for the first time their formal right to something that had previously been no more than a precarious concession? That CLGA, and only CLGA, can stave off the threat of "licensing at the source," and all that this would mean to every composer and lyricist? And while we are at it, let us note that there is nothing wrong with taxing according to income, especially since it is the man who earns more who stands to benefit more from our Guild's work, since his return in royalties is so much greater.

ROYALTIES AND REALITIES

Besides, it is very rarely that the complaints about our assessment structure come from those who are most highly taxed. Somehow, these men, to whom we should all be grateful since a relatively few of them support a disproportionately large part of the Guild's operations, seem to have quite as much understanding of this situation as their professional success suggests they bring to their work. It does seem odd that the fellows who give the most to CLGA in terms of time and effort and money are also the ones most willing to subordinate their own immediate interests to those of the Guild. Odd, and very lucky for all of us. Is it too much to ask that those who can see no further than the tip of their agents rethink the issue that has made this long letter necessary and devote themselves to the service of the Guild, which is also their own?

EXHIBIT 25 - CLGA PRESS RELEASE DATED NOVEMBER 15, 1971 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

Immediate Press Release
November 15, 1971

The Composers and Lyricists Guild of America has voted to strike the Association of Motion Picture and Television Producers, Inc. at the expiration of their present contrat, Midnight, November 30, 1971.

During last week, the Composers and Lyricists Guild has been negotiating with the producers association for a new Collective Bargaining Agreement.

The Guild was represented by Elmer Bernstein, President; Ted Cain, Executive Director and a committee of composers which included Henry Mancini (Moon River), Burt Bacharach (Raindrops Keep Falling), Alan Bergman (Windmills Of Your Mind), Arthur Hamilton (Cry Me A River), Jay Livingston (Che Sera, Sera), Lalo Schifrin (Mission Impossible:), Sherman Brothers (Mary Poppins), Quincy Jones (In The Eyes Of Love), Neal Hefti (Girl Talk) and David Raksin (Laura).

The Producers were represented by Charles Boren, Executive Vice-President and chief negotiator; Alfred P. Chamie, Vice-President; Eugene Arnstein, Vice-President; Saul Weislow and delegates from all of the major studios and independents of note.

Theodore W. Kheel, well known labor lawyer, negotiatior and mediator of New York City, as special counsel and Abraham Marcus of Beverly Hills, the Guild's regular counsel represented the Guild at the negotiations.

Negotiations with the AMPTP reached an impasse last Wednesday (10) on the issue of Copyright ownership. Under the present agreement, the Producer controls and owns not only the use of music in the film, for which it was composed, but may re-use the music in other films, television, sell it to be used as commercial jingles, records or further use of the music in any medium now known or which may be invented in the future, according to the language of the contract. The composer may not make any further use of his music including public concert performances without permission of the Producer.

EXHIBIT 25 - CLGA PRESS RELEASE DATED NOVEMBER 15, 1971 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

Under the terms of the present contract, it is stated that at the time of payment to the composer, the producer becomes, in a legal sense, the author of the composition. This onerous concept has not been in practice since the early days of the 19th century, when Mozart and Haydn worked for their royal Masters in Europe.

CLGA is asking for copyright control by the creator of the music and offering the producers certain guarantees enabling him to exploit the music for the benefit of his product. In addition CLGA has asked to have its Pension benefits brought up to standards of other Guilds and Unions; to institute reasonable limit on the amount of work the composer can be required to do in a given week (presently there is no limit on such exploitation); that the issue of video cassettes and such other futuristic media be left for a time as the use and application becomes clearer.

All of these requests were denied, therefore, leaving CLGA no other choice, but to recommend a work stoppage.

CLGA has been encouraged by the promise of support on the Rights issue from various associations of composers in foreign countries.

EXHIBIT 26 - CLGA NOTICE TO MEMBERS, DATED NOVEMBER 19, 1971 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

November 19, 1971

TO: All CLGA Members

The Executive Board met Thursday evening, November 18, 1971 and issued the following directive:

IMPORTANT

No member of the Composers and Lyricists Guild of America, Inc. shall work for any Producer Member of the Association of Motion Picture and Television Producers until a satisfactory Minimum Basic Agreement is negotiated and ratified by the membership.

All members of the Composers and Lyricists Guild of America, Inc. may work for any Independent Producer of theatrical and television motion pictures who will sign the new CLGA Minimum Basic Agreement. These Independents are not to be associated directly or indirectly with any member of the AMPTP group.

The terms of the new CLGA Minimum Basic Agreement will be as the present one with the changes asked for in our demands as outlined in our letter to you dated September 14, 1971.

The most important clause is the ownership by the composer of the music.....ownership of the copyright, not just ownership of publication.

This contract will contain a "favored nations clause" to the benefit of the producer. The composer, by separate agreement or contract, may negate this clause. A copy of this revised contract will be available shortly after December 1, 1971.

Any and all music composed prior to Midnight, November 30, 1971 may be orchestrated (no adaptation or arranging), copied and recorded by any CLGA member at any future date. CLGA members may conduct and/or supervise any such recordings (These are recognized as AFM functions).

If you have a personal service contract which extends past December 1, 1971 or if you have a contract starting after that date you are not to perform after Midnight, November 30, 1971. You cannot be held liable for breach of contract as per ARTICLE 14 of the existing Minimum Basic Agreement, a copy of which is enclosed.

EXH. NO. BORAK, REPORTERS

President Elmer Bernstein and Special counsel Ted Kheel are in Miami today (19) to meet with President Hal Davis of the AFM. This meeting was instituted in the East and shows that the AFM International is aware of our troubles.

Shortly after Mr. Bernstein returns, we will send you a NEWSLETTER reporting on all phases of the strike to date.

If you want more information, call Ted Cain at the Guild office or if the question is urgent you may call him at home, 274-3906.

Be assured that the one aim of the Guild officers, the Negotiating Committee and the Executive Board is to get an agreement as soon as possible, a fair contract righting the wrongs you outlined them at the membership meetings.

EXHIBIT 27 - CLGA PRESS RELEASE DATED FEBRUARY 1, 1972 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

Press Release

February 1, 1972

At a general membership meeting yesterday (January 31, 1972) the Composers and Lyricists Guild of America, Inc., overwhelming voted to authorize its legal counsel to file an Anti-Trust Suit against the Association of Motion Picture and Television Producers, the details of which will be revealed after the filing in Federal Court next week.

At the same meeting the CLGA membership also voted to permit its members to accept assignments for scores and songs on a one-picture or one-TV segment basis. Negotiating contracts on an individual basis subject to CLGA guidelines and work rules.

This unprecedented action shifts the composers and lyricists struggle for ownership of all of their rights from the labor to the legal arena.

Composers and Lyricists
Guild of America, Inc.

EXHIBIT 28 - CLGA PRESS RELEASE DATED FEBRUARY 7, 1972 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

February 7, 1972

Follow-up statement re CLGA Anti-Trust Suit

by Elmer Bernstein for Press Release:

THE FILING OF THIS SUIT IS A LAND MARK FOR COMPOSERS EVERYWHERE BECAUSE IT SYMBOLIZES THEIR DETERMINATION TO REFUSE TO SIGN AGREEMENTS WHICH DEPRIVE THEM OF ALL THEIR RIGHTS IN THEIR MUSIC. REGARDLESS OF THE OUTCOME, IT HAS ALREADY STIRRED OUR CONSCIENCE AS ARTISTS WHO BELIEVE IN THE ONGOING VALUE OF OUR WORK AND FURTHER THAT IT'S LIFE OUTSIDE THE FILM MEDIA RIGHTFULLY AND MORALLY BELONGS TO THE COMPOSER AND TO THE PUBLIC.

NEVER AGAIN WILL COMPOSERS AS A COMMUNITY SIGN AN AGREEMENT WHICH CONSTRUEDS ALL OF THE VARIOUS RIGHTS IN A PIECE OF MUSIC OR A SONG TO BE A PROPERTY FOR WHICH MAY AT ITS OWNERS DISCRESSION BE LOCKED AWAY FROM ITS COMPOSER AND FROM THE PUBLIC.

Composers and Lyricists
Guild of America, Inc.

EB/z

TO: Ron Pennington, Hollywood Reporter
Liz Murphy, Variety
Earl Wingard, GeneShefrin, P.R.

EXHIBIT 29 - LETTER DATED DECEMBER 1, 1971, WITH ATTACHMENT NOTICE TO MEDIATION AGENCIES - ANNEXED TO AFFIDAVIT OF SIMON ROSE

LAW OFFICES
MARCUS & REINIS
9250 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA 90212
CRestview 6-3123
CABLE ADDRESS: MARCZIP

ABRAHAM MARCUS*
CHELL N. REINIS
* MEMBER OF NEW YORK BAR.

NEW YORK OFFICE
ZISSU, MARCUS & STEIN
270 MADISON AVENUE

1971

December 1, 1971

Commissioner Bert Walter
Federal Mediation and Conciliation Board
Federal Building 7113
300 North Los Angeles Street
Los Angeles, California 90012

Dear Commissioner Walter:

Re: Composers and Lyricists Guild of America/
Association of Motion Picture and Television
Producers Dispute

In accordance with our telephone conversation, I enclose herewith notice to the Regional Office of the Federal Mediation and Conciliation Service.

You will note that the date of this notice is November 29, which is the date on which Mr. Ed Scott of the San Francisco Regional Office accepted oral notification by Theodore W. Kheel, Esq., Special Counsel for Composers and Lyricists Guild of America, and the filing of the notice is, therefore, made nunc pro tunc as of November 29, 1971, at 4:45 P.M.

I am enclosing a copy of confirming letter of November 29, to Mr. Scott.

Very truly yours,

Abraham Marcus
Counsel for Composers and
Lyricists Guild of America

AM/p
Enclosures
cc: Theodore W. Kheel, Esq.
Composers and Lyricists Guild of America

EXHIBIT 29 - LETTER DATED DECEMBER 1, 1971, WITH ATTACHMENT NOTICE TO MEDIATION AGENCIES - ANNEXED TO AFFIDAVIT OF SIMON ROSE

FMCS Form F-7
Rev. May 1964
Ch-2003 O/M-C/H

Form Approved
Budget Bureau No. 23-R001.10

NOTICE TO MEDIATION AGENCIES

To: Regional Office, FEDERAL MEDIATION AND CONCILIATION SERVICE; and United States Government

To: _____ Date November 29, 1971
(Appropriate State or Territorial agency)

You are hereby notified that written notice of the proposed termination or modification of the existing collective bargaining contract was served upon the other party to this contract and that no agreement has been reached.

1. (a) Name of employer Association of Motion Picture and Television Producers Phone No. 652-2300
(If more than one company or an association, submit names and addresses on separate sheet in duplicate)

Address of establishment affected 8480 Beverly Boulevard, Hollywood, Calif. 90048
(Street) (City) (State) (Zip Code)
(If more than one establishment, or plant, list addresses on separate sheet)

(b) Employer Official to communicate with Charles Boren, Vice President Phone No. 652-2300
(Name and Title)

Address 8480 Beverly Boulevard, Hollywood, California 90048
(Street) (City) (State) (Zip Code)

2. (a) International union and Local No. None Phone No. -
Composers and Lyricists Guild of America, Inc.

Address of local union 6565 West Sunset Boulevard, Hollywood, Calif. 90028
(Street) (City) (State) (Zip Code)

(b) Union Official to communicate with Abraham Kurous, Counsel Phone No. 276-2123

Address 9350 Wilshire Boulevard, Suite 203, Beverly Hills, Calif. 90212
(Street) (City) (State) (Zip Code)

3. (a) Number of employees covered by the Contract (s) 400 - 600 large

(b) Total number employed by the Company at this location (s) not applicable

4. Type of establishment and principal products, or services Motion picture and television film producers
(Factory, mine, wholesaler, over-the-road trucking, etc.)

5. (a) Contract expiration or reopening date Expiration November 30, 1971

6. Name of official filing this notice Abraham Kurous, Counsel for the Composers and Lyricists Guild of America, Inc.

Address 9350 Wilshire Blvd., Suite 203, Beverly Hills, Calif. 90212 Phone No. 276-2123

Check on whose behalf this notice is filed: Union X Employer _____

Signature _____

Receipt of this notice does not constitute a request for mediation nor does it commit the agencies to offer their facilities. This particular form of notice is not legally required. Receipt of notice will not be acknowledged in writing by the Federal Mediation and Conciliation Service.

(Attach copies of any statement you wish to make to the Mediation Agencies.)

No. 6 COPY.—To be retained by party filing this notice.

EXHIBIT 30 - REPORT OF TRADE DISPUTE, DATED JANUARY 5, 1972, WITH LETTER DATED DECEMBER 29, 1971 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

(Reproduced herein at pages 361a through 362a)

STATE OF CALIFORNIA
DEPARTMENT OF EMPLOYMENT

Return 2 copies to:

1525 South Broadway
Los Angeles 15, California

REPORT OF TRADE DISPUTE
UNION DIRECTLY INVOLVED

SEE REVERSE OF THIS FORM FOR INSTRUCTIONS

1. Name of union COMPOSERS & LYRICISTS GUILD of AMERICA, INC.
Local Number - Affiliation -
Address 6565 Sunset Bl., #419 Phone Number 462-6068
Business Agent Ted Cain

2. Name of Employer involved All Motion Picture and TV Producers
Address

3. How many, and what class(es) of workers does the union represent, or seek to represent, in the employer's establishment?
Composers of music and lyrics

4. When did the trade dispute begin? September, 1969

5. State, in detail, the principal issues Wages, Owenership of Copyright, Working Hours and Conditions, Pension and Health & Welfare

6. Has a picket line been established by your union? Yes If so, when: 1 day 12/30/71

7. Are union members required to do picket duty? No

8. Did union members, by strike vote or any other means, authorize the union to call a strike? Yes If so, when? Dec. 1, 1971

9. Was employer given a strike notice? Yes If so, when? 30 days prior

10. Will any employees be permitted to work on a union pass? If so, how many and what class(es) of workers? No

11. Are union members being advised to file claims for unemployment insurance? No If so, what is the estimated number who will file? ?

12. Are union members receiving any strike or lockout benefits from the union? No If so, what amount per week? -

13. Please state on the reverse side of this form, any additional facts which may have a bearing on the eligibility of members of your union involved in the trade dispute for unemployment insurance under the California Unemployment Insurance Code.

Date Jan. 5, 1972

(Signature)

Executive Director
(Title)

OF CALIFORNIA

DEPARTMENT OF EMPLOYMENT

69-1

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
LOS ANGELES AREA - UNEMPLOYMENT INSURANCE
1525 SOUTH [illegible]
LOS ANGELES, CA 90015

REFER TO
V

STRIKE 12/1/71

December 29, 1971

Composers & Lyricists Inc.
6565 Sunset Blvd., Suite 419
Hollywood, Ca. 90028

TRANSMITTAL FOR EMPLOYER OR UNION REPORT FORMS

Information received by this Department indicates that a trade dispute is now in progress at Assn. of Motion Picture & TV Producers Inc., 8480 Beverly Blvd., Hollywood 90048.

The employer is required by Section 1262-2, Title 22 of the California Administrative Code to furnish within five days of the leaving of work the names and social security account numbers of those individuals who left their work because of a trade dispute.

The California Unemployment Insurance Code provides in Section 1262 that individuals who leave their work because of a trade dispute are ineligible for benefits. Before this can be properly determined, it is necessary that the Department obtain all the pertinent facts from the employees, their union representatives, and the employers.

We are, therefore, enclosing forms which we are asking you to complete. Instructions for completing the report are found on the back of the forms. However, if you need further assistance please contact the nearest office of the Department.

Your cooperation, prompt completion and return of the documents to the office indicated on the forms will be appreciated.

The eligibility of a claimant to receive unemployment insurance benefits must be determined individually and based upon the facts in each particular case.

O. Laubbacher

Oscar G. Laubbacher/kg
Area Trade Dispute Representative

Enclosure

DE 4656 Rev. 6 (4-67)

362a

EXHIBIT 31 - WORK STOPPAGE REPORT DATED JANUARY 10, 1972 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

U. S. DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS
WASHINGTON, D. C. 20212

N.L.R.B. 1972

DUPLICATE
To be retained by respondent

5

WORK STOPPAGE REPORT

Your report will be held in confidence
Please answer all questions

Januayr 10, 1972

NO. 7112263 A-1

This request for information relates to:

Mr. Abraham Marcus
Composers and Lyricists Guild
6565 W. Sunset
Los Angeles, California 90012

A work stoppage of employees at the Association of Motion Picture and T.V. Producers, Inc. in Los Angeles, Calif., about Dec. 1, 197 because of a labor dispute.

1. Employer — Name and mailing address: ALL MOTION PICTURE PRODUCERS ~~COMPOSERS & LYRICISTS GUILD OF AMERICA, INC.~~

2. Establishments involved in stoppage — Number of establishments directly involved or in which workers observed picket lines: 68

If more than one establishment, use reverse side; if one, enter below:

a. Location: Los Angeles, Hollywood, Culver City, etc.

b. Industry: Motion Picture Productions

(Indicate major type of activity and also principal products or services, e.g., Mining-bituminous coal; Construction-highways and streets; Manufacturing-wooden upholstered furniture; Wholesale trade-plumbing supplies; Transportation-motor freight.)

3. Union involved

Name	AFL / CIO	Other
COMPOSERS & LYRICISTS GUILD of AMERICA, INC.	no	no

Local No.	Address
--	6565 Sunset Bl., Hollywooc, CA. 90028

4. Dates of stoppage

Stoppage began on	Settlement was reached on	Settlement was ratified on (if applicable)	Employees returned to work on
12/1/71	?		

5. Number of workers affected

TOTAL workers idled at least one full shift or day: 300 workers

(IMPORTANT—Include *all workers* directly involved in the stoppage *and* workers made idle by lack of work in the same establishments or by observance of picket lines. If exact figures are not available, please provide estimate.)

Did the number idle change significantly during the stoppage? Yes ☐ No ☐
(If "yes," please enter changes in number idle and dates of changes on reverse side of sheet.)

6. Normal workweek prior to stoppage ..... varied per job days

7. Contract status *(check one)*

Stoppage occurred

- ☐ In negotiation of first contract or in obtaining union recognition
- ☒ In renegotiating contract terms (expiration or reopening)
- ☐ During term of contract (change in contract terms not involved)
- ☐ Other *(specify)*

8. *MAJOR* issues in dispute (list in order of importance)

Ownership of Copyright, Working conditions, Salaries

9. Did the agreement to return to work include a procedure for handling any unsettled major issues involved in the stoppage (e.g., by submitting issues to arbitration)? Yes ☐ No ☐ If "yes", indicate the issues and the procedure agreed upon.

10. Did a Federal, State, or local government a[illegible]y, or a private mediator, mediate in this dispute or assist in arranging the return to work? (Check more than one if applic[illegible]e). Federal ☒ State ☐ Local ☐ Private ☐ None ☐

Please identify assisting government agency, if any

1/17/72 (Date) — [signature] (Signature and title of person making report) — Executive Director (Company or organization)

Use reverse side for any clarifying remarks.

EXHIBIT 31 - WORK STOPPAGE REPORT DATED JANUARY 10, 1972 - ANNEXED TO AFFIDAVIT OF SIMON ROSE

54-2

U.S. DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS
WASHINGTON, D.C. 20212

Reference No. 340

RECEIVED
JAN 14 1972
CIO

Gentlemen:

This request for information is part of our regular program of collecting and publishing labor statistics.

The enclosed form requests information relating to a work stoppage that involved your organization. Will you please complete the form and return it to us within 10 days in the addressed envelope which requires no postage. This information will be held in confidence.

If the dispute is still in effect, please enter on the form whatever information is now available. If no workers were idle a full shift or more, your return of the schedule with a notation to this effect will be appreciated.

Thank you for your cooperation.

Very truly yours,

Geoffrey H. Moore

GEOFFREY H. MOORE
Commissioner

Enclosure

AFFIDAVIT OF CHARLES BOREN
IN OPPOSITION TO PLAINTIFFS' MOTION

(Reproduced herein at pages 366a through 373a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al.,	:	
Plaintiffs,	:	72 Civ. 542 (S.J.R.)
- against -	:	
UNIVERSAL PICTURES, INC., et al.,	:	AFFIDAVIT
Defendants.	:	

STATE OF CALIFORNIA)
: ss.:
COUNTY OF LOS ANGELES)

CHARLES BOREN, being duly sworn, deposes and says:

1. I am a former officer of the Association of Motion Picture and Television Producers, Inc. (the "Association"), the members of which include the following defendants: Columbia Pictures Industries, Inc., Walt Disney Productions, Inc., Metro-Goldwyn-Mayer, Inc., Paramount Pictures Corp., Twentieth Century-Fox Film Corporation, Warner Bros., Inc. and Universal City Studios, Inc. For almost 25 years I served as its Executive Vice President and during that entire period I was in charge of its industrial relations and collective bargaining operations. In April 1972 I was appointed Vice Chairman of the Board, a position which I held at the time of my retirement in March 1973. In recognition of my quarter century of service in the

labor negotiations sector of the motion picture industry I received an Academy Award ("Oscar") earlier this year.

2. During the 25 years that I was in charge of the Association's labor relations programs, I worked on collective bargaining agreements with more than 40 unions, including the Composers and Lyricists Guild of America, Inc. (the "CLGA"). I also attended somewhere between 3,000 and 6,000 collective bargaining sessions with these various unions, including scores of collective bargaining meetings with representatives of the CLGA. I reviewed many thousands of proposals submitted at these sessions, including numerous proposals from the CLGA.

3. I am familiar with the issues in this case and the conflicting factual assertions of the parties having devoted virtually my entire professional life to the solution of similar labor disputes. For the purposes of this affidavit, I have refreshed my recollection by referring to certain AMPTP documents and I submit this affidavit in opposition to plaintiffs' motion for summary judgment and a preliminary injunction.

4. I can state unequivocally that the only discussions I ever had with representatives of producers of motion pictures and television shows concerning contracts with composers and lyricists were in connection with the collective bargaining agreements referred to below. To my knowledge there have never been any agreements among any of the defendants and/or the AMPTP to restrict the rights of individual composers* to bargain, or

---

* The term "composers" includes lyricists.

to impose alleged "standard-terms" upon them.

History of the Collective Bargaining Negotiations and Agreements Between the CLGA and the AMPTP.

5. In August 1955 the CLGA was certified by the National Labor Relations Board ("NLRB") as the exclusive collective bargaining agent for the composers and lyricists working as employees for the motion picture company defendants then producing theatrical feature films. Early in 1956 representatives of the CLGA and the AMPTP commenced negotiations with a view to arriving at a collective bargaining agreement. I was in charge of the AMPTP's bargaining team and personally participated in the approximately 15 collective bargaining sessions which resulted in the execution, as of June 1960, of the first Collective Bargaining Agreement, known as the "Minimum Basic Agreement of 1960". The term of this Agreement, as amended in 1961 and 1962, continued until May 31, 1964.

6. The next Collective Bargaining Agreement, the "Minimum Basic Agreement of 1965", with various amendments, covered the period January 1965 through December 1966. Again, it was preceded by numerous negotiating sessions in which I participated as chief spokesman for the AMPTP's negotiating committee.

7. The third Collective Bargaining Agreement, the "Minimum Basic Agreement of 1967" initially covered a term from July 1, 1967 through June 30, 1969. As in the past, I headed the AMPTP's bargaining team during the various negotiating sessions which resulted in the Agreement.

8. All of the Collective Bargaining Agreements contained a provision that the term would continue in effect during negotiations for extensions or modifications of the Agreements. By letter agreements, the Minimum Basic Agreement of 1967 was extended from time to time as follows: to April 30, 1971; to June 30, 1971; to October 31, 1971; to November 30, 1971. In addition to these extensions, 14 collective bargaining sessions were held on the following dates: June 23, 1969; July 8, 1969; August 21, 1969; August 27, 1969; September 10, 1969; October 3, 1969; December 15, 1969; February 27, 1969; October 11, 1971; November 8, 9 and 10, 1971; and November 24 and 29, 1971.

9. At midnight November 30, 1971, the CLGA began a strike against the member companies of the AMPTP. On the same day the CLGA filed with the NLRB a verified unfair labor practice charge against the AMPTP, which alleged, in pertinent part, as follows:

> "The above-named employer ... has ... refused to bargain in good faith regarding the terms and conditions of employment for employees in the bargaining unit covering composers of music or lyrics for the Motion Picture and Television Industry. These acts of refusal have also taken the form of discriminatory conduct against employees and future employees in violation of 8(a)(3) of the Act, thereby discouraging membership in the union." (emphasis added)

A copy of the CLGA's unfair labor practice charge is annexed as Ex. A.

10. Also on November 30, 1971, the AMPTP filed an unfair labor practice charge against the CLGA, asserting that:

(a) the CLGA violated section 8(d)(3) of the National Labor Relations Act ("NLRA") by striking w.. out g.ving the proper statutory notice; and

(b) the CLGA struck over a non-mandatory subject of bargaining.

The issue over which the CLGA bargained to an impasse and called the strike was the rights of the parties in the music and lyrics written by the composers for motion pictures and television shows.

A copy of the AMPTP's unfair labor practice charge is annexed as Ex. B.

11. During December 1971 and January 1972, representatives of the CLGA and the AMPTP met with a representative of the Federal Mediation Service, at his request, in an effort to resolve the labor disputes between the parties but the mediator was unsuccessful.

12. On March 7, 1972, just one month after the institution of this action, the CLGA withdrew its unfair labor practice charge against the AMPTP.

13. With respect to the AMPTP's charge against the CLGA, the NLRB found that the NLRA had indeed been violated by the CLGA's failure to give an appropriate statutory strike notice and I understand that the NLRB was prepared to issue a complaint on that charge. I am advised by counsel, and this conforms with my own practical experience, that a necessary predicate to such a finding is that the matter is within the scope of the NLRA and

the parties are subject to the jurisdiction of the NLRB. The CLGA avoided the issuance of a complaint by entering into lengthy settlement negotiations with the NLRB culminating in a Settlement Agreement between the CLGA and the NLRB dated June 2, 1972. This agreement requires the CLGA to give the appropriate statutory notice prior to any future strike (Ex. C). In addition, the NLRB required the CLGA to post an official "Notice to Members" advising its members of the terms of the Settlement Agreement (Ex. D).

14. The NLRB dismissed the part of the charge proferred by the AMPTP relating to the "rights" issue, holding:

> "the contractual demand over which the Guild allegedly bargained to impasse and threatened to strike is a mandatory subject of bargaining within the meaning of Section 8(d) of the Act under the test of Borg-Warner, 356 U.S. 342 (1958), as it involves the relationship between employer and employee, and settles a 'term and condition' of employment, i.e., the total compensation accruing to the composers from their unit work."
> (emphasis added)

A copy of the Regional Director's letter is annexed as Ex. E.

The "rights" issue has always been the subject of collective bargaining and the producers have made substantial concessions on this issue.

15. The three collective bargaining agreements between the CLGA and the AMPTP like the collective bargaining agreements with all other unions in the motion picture industry, recite the various provisions with respect to wages, hours and terms and

conditions of employment which had been bargained out at the numerous negotiating sessions preceding each of the agreements. Significantly, the President of the CLGA representing the composer employees who sat across the table from me at the sessions held in the years 1962 through 1970 is the same David Raksin who, I am informed, has submitted an affidavit in support of the instant motion in which he denies that he was an "employee" of any of the producer defendants during any of those years.

16. With regard to the so-called "rights" issue, although all the participants in the negotiating sessions* recognized that, as a matter of law, all rights in the compositions written for the producers by the composers belonged to the producers, nevertheless those rights were the constant subject of bargaining at those sessions. As a result, numerous concessions were made by the producers on this issue and were incorporated in the Minimum Basic Agreements.

17. Thus, after declaring that the producer was entitled to all rights, including the performing rights (Article 11), the first Minimum Basic Agreement contained an assignment by the producer of the worldwide performing rights to the composer and a publisher of the producer's choice "in order to assure the composer of participation in the revenue which may be derived from performances of the compositions...." As a result of this provision, the composers obtained 50% of these revenues which, the CLGA has acknowledged, are by far the largest single source

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* The CLGA participants included Abraham Marcus and Ted Cain who have also submitted affidavits in support of the motion.

of income obtained from the exploitation of compositions written for motion pictures and television shows (Rose aff., Ex. 24).

18. Further substantial concessions with respect to the producer's rights were made to the composers as a result of the bargaining sessions which preceded the Minimum Basic Agreement of 1965. Under Article 21 (f that Agreement, the composers were given substantial publication royalties on various printed copies of the music, including sheet music and piano copies, and on all types of mechanical reproduction. Moreover, the composers were given an opportunity to purchase all rights in certain music not used by the producers within a period of five years from the date of composition at the producers' cost. (Article 20(b)(7))

19. The Minimum Basic Agreement of 1967 reduced the period of five years referred to in paragraph 17 above to three years. This represented yet another gain for composers on the "rights" issue, achieved through the collective bargaining process. I would also point out that the minimum wage scale increased significantly with each agreement.

Sworn to before me
this 20th day
of November,
1973.

Charles Boren

Alfred P. Chamie
Notary Public

OFFICIAL SEAL
ALFRED P. CHAMIE
NOTARY PUBLIC — CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires Sep. 7, 1974

EXHIBIT A - CLGA UNFAIR LABOR PRACTICE CHARGE,
FILED NOVEMBER 30, 1971 -
ANNEXED TO AFFIDAVIT OF CHARLES BOREN

NLRB-501
(2-67)

Form Approved
Budget Bureau No. 64-R001.1

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.	DO NOT WRITE IN THIS SPACE Case No. 31-CA-2740 Date Filed 11-30-71

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
~~ASSOCIATION OF MOTION PICTURE & TELEVISION PRODUCERS, INC.~~

b. Number of Workers Employed

c. Address of Establishment (Street and number, city, State, and ZIP code)
8480 Beverly Blvd.

d. Employer Representative to Contact
Charles Boren

e. Phone No.

f. Type of Establishment (Factory, mine, wholesaler, etc.)
~~Incorporation~~

g. Identify Principal Product or Service
Motion picture & television production

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and ~~(2) and (5)~~ (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above-named Employer has since on or about November 8, 1971, and at all times since that date refused to bargain in good faith regarding the terms and conditions of employment for employees in the bargaining unit covering composers of music or lyrics for the Motion Picture and Television Industry. These acts of refusal have also taken the form of discriminatory conduct against employees and future employees in violation of 8(a)(3) of the Act, thereby discouraging membership in the union.

The Employer has by his conduct refused to bargain with regard to provisions of the contract that have restrained the development, promotion and dissemination of music in violation of law and public policy.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)
ELMER BERNSTEIN Composers & Lyricists Guild of America, Inc.

4a. Address (Street and number, city, State, and ZIP code)
6565 Sunset Blvd., Suite 419
Hollywood, CA 90028

4b. Telephone No.
~~462-6028~~

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
Composers & Lyricists Guild of America, Inc.

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/Elmer Bernstein (Signature of representative or person filing charge)

President (Title, if any)

Address _____ (Telephone Number)

November 30, 1971 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 824-938

EXHIBIT B - AMPTP UNFAIR LABOR PRACTICE CHARGE,
FILED DECEMBER 1, 1971 -
ANNEXED TO AFFIDAVIT OF CHARLES BOREN

FORM NLRB-508 (12-69)

Form Approved
Budget Bureau No. 64-R003.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 31-CB-890

Date Filed 12-1-71

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name	b. Union Representative to Contact	c. Phone No.
Composers and Lyricists Guild of America, Inc.	Ted Cain	462-6038

d. Address (Street, city, State and ZIP code)
6565 Sunset Boulevard, Suite 419, Los Angeles, California 90028

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (3) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

(1) Since on or about December 1, 1971, the above-named labor organization has refused to bargain collectively, in violation of Section 8(d), by engaging in a strike without serving the requisite notice under Section 8(d)(3) of the Act.

(2) Since on or about September 1, 1971, and continuing through this date, the above-named labor organization has refused to bargain collectively with the Association of Motion Picture and Television Producers, Inc. by threatening to strike on or about November 30, 1971, without having served the requisite notice under Section 8(d)(3) of the Act.

(3) Since on or about September 1, 1971, the above-named labor organization has refused to bargain collectively with the Association of Motion Picture and Television Producers, Inc. by conditioning acceptance of a new collective bargaining agreement upon the acceptance by the Association of contractual conditions which are non-mandatory subjects of collective bargaining; and further, by bargaining to impasse and threatening to strike on or about November 30, 1971, over such demands.

(4) By these and other acts, the above-named labor organization is violating the Act.

3. Name of Employer
Association of Motion Picture and Television Producers, Inc.

4. Location of Plant Involved (Street, city, State and ZIP code)
8480 Beverly Boulevard, Los Angeles, California 90048

5. Type of Establishment (Factory, mine, wholesaler, etc.)	6. Identify Principal Product or Service	7. No. of Workers Employed
Motion Picture Studios	Production of motion picture and television films.	over 25,000

8. Full Name of Party Filing Charge
David G. Miller for Loeb and Loeb

9. Address of Party Filing Charge (Street, city, State and ZIP code)
One Wilshire Building, 16th Floor
Los Angeles, California 90017

10. Telephone No.
627-4241

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By David G. Miller (Signature of representative or person making charge) Attorney (Title or office, if any)

Address One Wilshire Building, 16th Floor, Los Angeles, California 90017 627-4241 (Telephone number) November 30, 1971 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

EXHIBIT C - CIGA AND AMPTP SETTLEMENT AGREEMENT,
APPROVED JUNE 2, 1972 -
ANNEXED TO AFFIDAVIT OF CHARLES BOREN

Form NLRB 4775
(6-71)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

In the Matter of

COMPOSERS AND LYRICISTS GUILD OF AMERICA, INC.

and

Case No. 31-CB-390

(ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.)

SETTLEMENT AGREEMENT

The undersigned Charged Party and the undersigned Charging Party, in settlement of the above matter, and subject to the approval of the Regional Director for the National Labor Relations Board, HEREBY AGREE AS FOLLOWS:

POSTING OF NOTICE — Upon approval of this Agreement, the Charged Party will post immediately in conspicuous places in and about its plant/office, including all places where notices to employees/members are customarily posted, and maintain for a period of at least 60 consecutive days from the date of posting, copies of the Notice attached hereto and made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to be shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit forthwith signed copies of said Notice to the Regional Director who will forward them to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for a period of at least 60 consecutive days from the date of posting. Charged Party will also mail a copy of said notice to each of its members.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

~~BACKPAY — The Charged Party will make whole the employees named below by payment to each of them of the amount of opposite his or her name.~~

The Charged Party, by entering into this Settlement Agreement does not admit that it has committed any unfair labor practices.

The Charged Party, by entering into this Settlement Agreement does not admit that the Composers and Lyricists Guild of America, Inc. is a labor organization within the meaning of the Act or that its members are employees within the meaning of the Act.

REFUSAL TO ISSUE COMPLAINT — In the event the Charging party fails or refuses to become a party to this Agreement, then, if the Regional Director in his discretion believes it will effectuate the policies of the National Labor Relations Act, he shall decline to issue a Complaint herein (or a new Complaint if one has been withdrawn pursuant to the terms of this Agreement), and this Agreement shall be between the Charged Party and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within 10 days thereof. This Agreement is contingent upon the General Counsel sustaining the Regional Director's action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case.

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or, in the event the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of advice that no review has been requested or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE — The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Such notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. In the event the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in the above case.

COMPOSERS AND LYRICISTS GUILD OF AMERICA, INC. (Charged Party)

By: Ted Cain - Executive Director (Name and Title)

Date: April 26, 1972

Recommended: JUN 2 1972 (Date)

By: Philip R. LaVere Board Agent

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC. (Charging Party)

By: (Name and Title)

Date:

Approved: JUN 2 1972 (Date)

By: Regional Director
National Labor Relations Board

U.S. G.P.O. 499-999

EXHIBIT D - NOTICE OF SETTLEMENT AGREEMENT, DATED AUGUST 9, 1972 - ANNEXED TO AFFIDAVIT OF CHARLES BOREN

NOTICE TO MEMBERS

POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

In order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our members that:

WE WILL NOT engage in, or cause or instruct the employees of members of the Association of Motion Picture and Television Producers, Inc., to engage in, a strike for the purpose of modifying or terminating a collective-bargaining contract without first having complied with the requirements of Section 8(d) of the Act.

COMPOSERS AND LYRICISTS GUILD OF AMERICA, INC.
(Employer)

DATED August 9, 1972 BY ted Cain
(Representative) (Title)
Executive Director

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 12th Floor, Federal Building, 11000 Wilshire Boulevard, Los Angeles, California 90024. Telephone: (213) 824-7357

EXHIBIT E - LETTER DATED JUNE 15, 1972 -
ANNEXED TO AFFIDAVIT OF CHARLES BOREN

I. ATIONAL LABOR RELATI NS BOARD
REGION 1
Bulfinch Building, 15 New Chardon Street
Boston, Massachusetts 02114
Telephone (617) 223-3300 7271

AMENDED DISMISSAL LETTER

June 15, 1972

David G. Miller, Esquire
Leob & Loeb
One Wilshire Building, 16th Floor
Los Angeles, CA 90017

Re: Composers and Lyricists Guild of America, Inc.
(Association of Motion Picture and Television Producers, Inc.)
Case No. 31-CB-890

Dear Mr. Miller:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, and in view of the undertaking contained in the Settlement Agreement herein, approved by me on June 2, 1972, it does not appear that it would effectuate the purposes of the National Labor Relations Act to institute further proceedings in regard to the allegation that the Guild engaged in a strike without giving the notice required by Section 8(d)(3) of the Act. Nor are further proceedings warranted as to allegation No. 3 of the charge inasmuch as the contractual demand over which the Guild allegedly bargained to impasse and threatened to strike is a mandatory subject of bargaining within the meaning of Section 8(d) of the Act under the test of Borg-Warner, 356 U.S. 342 (1958), as it involves the relationship between employer and employees, and settles a "term and condition" of employment, i.e., the total compensation accruing to the composers from their unit work. I am, therefore, refusing to issue complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board, Washington, D.C. 20570, and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D.C., by the close of business on June 28, 1972. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request for extension of time should be submitted to me.

EXHIBIT E - LETTER DATED JUNE 15, 1972 -
ANNEXED TO AFFIDAVIT OF CHARLES BOREN

Re: Case No. 31-CB-890 - 2 - June 15, 1972

If you file an appeal, please complete the notice forms I have enclosed with this letter and send one copy of the form to each of the other parties. Their names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal with the Regional Director within the time stated above.

Very truly yours,

Abraham Siegel
Regional Director

Enclosures

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

cc: General Counsel, National Labor Relations Board, Washington, D.C. 20570

Association of Motion Picture & Television Producers, Inc.,
8480 Beverly Boulevard, Los Angeles, CA 90048 (with attachment)

Composers & Lyricists Guild of America, Inc., 6565 Sunset Boulevard,
Suite 419, Hollywood, CA 90028

Theodore Kheel, Esquire, Battle, Fowler, Stokes & Kheel,
280 Park Avenue, New York, NY 10017 (Airmail)

Abraham Marcus, Esquire, 9250 Wilshire Boulevard, Beverly Hills, CA 90211

AFFIDAVIT OF HARRY GARFIELD
IN OPPOSITION TO PLAINTIFFS' MOTION

(Reproduced herein at pages 381a through 392a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al.,	:	AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND A PRELIMINARY INJUNCTION
Plaintiffs,	:	
-against-	:	
UNIVERSAL PICTURES, INC., et al.,	:	72 Civ. 542 S.J.R.
Defendants.	:	

STATE OF CALIFORNIA)
: ss.:
COUNTY OF LOS ANGELES)

HARRY GARFIELD, being duly sworn, deposes and says:

1. I am Vice President of MCA Music, a division of MCA Inc. ("MCA") one of the defendants in the above-captioned proceeding. I am familiar with the matters hereinafter set forth and I respectfully submit this affidavit in opposition to plaintiffs' motion for summary judgment dismissing the Fifth and Sixth Affirmative Defenses set forth in Universal City Studios, Inc.'s ("Universal") and MCA's answer to the complaint, and for preliminary injunctive relief. Universal is a subsidiary of MCA and I am fully familiar with its business and operations.

2. I have been employed in the entertainment industry for over 30 years and have continuously dealt with composers and lyricists. I spent 23 years with Warner Bros. Publishing Company eventually becoming assistant to Herman Starr, the President. During this period, I was involved in

both administrative and professional capacities, publishing of songs, accepting songs from writers and negotiating contracts. I commenced my employment with Revue Studios in 1960 and participated in the organization, development and expansion of the Music Department and three music publishing companies (e.g., Alaska, Shamley, and Hawaii music companies) which since have been merged into MCA Music, Inc. For approximately six years, I headed the Post Production Department which is responsible for the supervision of all departments contributing to the finishing of films, i.e., film editing, sound effects, and the recording of music. Since 1970, I have devoted my time exclusively to the supervision and operation of Universal's Music Dept. which services both theatrical and television films.

3. I have read plaintiffs' motion for summary judgment dismissing our defenses based on the labor exemption of the antitrust laws and the exclusive and primary jurisdiction of the National Labor Relations Board. Plaintiffs claim that these defenses must fail because they now wish to characterize themselves as "independent contractors" rather than "employees." Plaintiffs have attempted to ignore the fact that their union, the Composers & Lyricists Guild of America, Inc. ("CLGA") is the certified bargaining agent for them; that the CLGA has engaged in extensive collective bargaining negotiations over the years relating to the very issues in this litigation; and, that the CLGA has negotiated several collective bargaining agreements, entitled Minimum Basic Agreements relating to their wages, hours and terms and conditions of employment.

4. At no time have I, or to the best of my knowledge Universal or MCA, ever unlawfully agreed or conspired with any person to impose standard terms and conditions on the plaintiffs or any member of their class. Universal has negotiated directly and through the Association of Motion Picture and Television Producers with the CLGA over wages, hours and terms and conditions of employment of its composer and lyricist employees.

5. Universal employs numerous such composers and lyricists in connection with the production of theatrical and television films. Between 1960 and 1966, approximately 100 such composers and lyricists were employed by Universal, including 27 of the named plaintiffs. Between January 1, 1967 and June 30, 1973, Universal employed 33 of the named plaintiffs in this proceeding. Since 1960 all of these composers and lyricists have been employed by Universal as "employees" pursuant to direct employment agreements with Universal or by "loan out" agreements from other corporations for whom the composers work as "employees". Composers and lyricists who are direct employees of Universal complete the requisite W-4 withholding forms, and Universal makes the employer's contribution for social security, health, welfare and pension benefits. (Annexed as Exhibit "A" is a summary compilation of the withholdings made by Universal on behalf of its composer employees who are named plaintiffs between January 1, 1967 and June 30, 1973.) Universal also reimburses the lending companies, upon request and substantiation of payment, for the employer's contribution whenever the services of a composer or lyricist are borrowed.

6. In addition to the foregoing payments, Universal has provided office space, telephones, pianos and other supplies to composers and lyricists without charge. Annexed as Exhibit "B" is a list of a number of composers and lyricists who have utilized office space at our facilities. The fact that many composers work at home is a matter of their own personal election and a concession by Universal to their desires -- it is not a denial of available facilities at Universal.

7. Moreover, the services of Universal's Music Department, for the purpose of verifying the originality of each composition, is available for our composer and lyricist employees. On numerous occasions Universal found instances of plagiarism necessitating a rewrite of the composition or changes in the melody and construction of the song. Universal's Music Department has created and maintained this system, at great expense, for its composer and lyricist employees.

8. The terms and provisions of the employment agreements utilized by Universal are in accord with the collective bargaining agreements negotiated with the CLGA. Annexed as Exhibits "C" and "D" are illustrative direct employment agreements utilized by Universal in connection with theatrical and television films, respectively. In the usual course of events, I will call the composer or his agent directly, advise them that a television show or motion picture is available and ready for scoring and that I am interested in employing the composer to write, orchestrate

and conduct the music for the given film. I also explain what the compensation is and the time available for composition and recording. The composer will then accept or reject the offer without ever raising the question of copyright or publishing rights.

9. In reviewing our files in connection with this case, we have found no instance between January 1, 1967 and June 30, 1973 where a composer or lyricist demanded the right to retain the copyright exclusively for the music he was employed to write. Annexed as Exhibit "E" is a summary list of each of the named plaintiff composers employed during this period, our file number, a description of the type of contract executed, and an indication of whether a demand for the copyright was made.

10. I do not mean to suggest that Universal has never granted to composers rights which are greater than those negotiated by their union; they simply are not, or are very rarely, requested. Documents in Universal's files indicate that:

(a) in 1953, Universal agreed, at the request of Herman Stein, to an amendment to Mr. Stein's employment agreement reserving to Mr. Stein the publishing rights (for his publishing company) in the music he composed for Universal (A copy of this amendment is annexed hereto as Exhibit "F");

(b) in 1958, Frank Skinner requested and obtained the publishing rights respecting certain music which he composed for Universal's production "THE PERFECT FURLOUGH" (A copy of this agreement is annexed hereto as Exhibit "G");

(c) in 1960, Revue Studios (a predecessor in interest to Universal) returned all

rights (except for synchronization and performing rights) to four songs created by David Raskin pursuant to Mr. Raskin's request. (A copy of this quitclaim is annexed hereto as Exhibit "H");

(d) in 1971, Universal entered two loan-out agreements borrowing the services of Henry Mancini (one for the production "SOMETIMES A GREAT NOTION" and the other for "FRENZY") which provide that the lending company shall be paid 50% of the publishing profits derived from the exploitation of the music written by Mr. Mancini for these films.

11. The several affidavits submitted in support of plaintiffs' motion repeatedly suggest that the defendants, including Universal, do not exercise any supervision over their composer-employees. This is not the case. In connection with feature photoplays, the composer meets preliminarily with the director, producer and in some cases with the star; they discuss the concept and mood of the music and determine whether songs should be used as part of the title or incorporated in the score. Specifically, such discussions (and the participants therein - [composer is underscored]) were held in connection with the following theatrical and television films:

"Airport" - between Alfred Newman, Ross Hunter, George Seaton, Ken Darby and deponent;

"Sweet Charity" - between Cy Coleman and Robert Fosse;

"Hell Fighters" - between Leonard Roseman, Robert Arthur and deponent;

"Willie Boy" - between Dave Grusin and Abe Polanski;

"Midnight Man" - between Dave Grusin, Burt Lancaster and Roland Kibbee;

"Sting" - between Marvin Hamlisch and George Roy Hill;

"Thunderbolt" - between Chuck Bernstein and Bernard Schwartz;

"Sugarland Express" - between John Williams and Steve Spielberg;

"Willie Dynamite" - between J. J. Johnson and Gilbert Moses;

"You'll Like My Mother" - between Gil Melle and Lamont Johnson;

"Tenafly" - between Gil Melle and Messrs. Levinson and Fink;

"Kojak" - between Billie Goldenberg and Matt Rapf;

"Chase" - between Oliver Nelson, Jack Webb and Robert Cinador;

"O'Hara, Treasury Agent" - between Fred Steiner, Gus Levene, Jack Webb and Ray Heindorf;

"Emergency" - between Nelson Riddle and Jack Webb; and

"Marcus Nelson Murders" - between Billie Goldenberg, Abby Mann and Matt Rapf.

In addition to the foregoing, I participated on numerous occasions in similar type discussions in connection with other theatrical and television films.

12. Much is done prior to creation and following the delivery of musical compositions. The right to supervise, alter and/or reject musical compositions is essential for Universal which has hired these composers for the creation of musical compositions; it is specifically set forth in the employment agreements; and, it is frequently exercised by the producer or director whereby the music editor adapts and creates a new cue from sections of other cues recorded as part of the score.

13. I must also point out several glaring factual inaccuracies set forth in the affidavits submitted in support of plaintiffs' motion for summary judgment:

I. Mr. Fred Steiner was employed by Universal in connection with the television series "O'HARA, TREASURY AGENT." His affidavit respecting Universal is inaccurate in that:

(a) There was more than a decision of selecting where music should be inserted in the film. Jack Webb and Ray Heindorf discussed the concept, style and mood of the music that would be required with Mr. Steiner and Mr. Gus Levene (the arranger who was also an employee of Universal);

(b) Universal furnished the services of a music editor in connection with the spotting;

(c) Universal furnished and paid for the services of the arranger and such compensation was not borne by Mr. Steiner;

(d) As indicated in paragraph 6 above, Universal furnishes offices equipped with piano and telephone, and supplies the composer with pencils, score paper and any equipment that may be necessary. The fact that Mr. Steiner worked at home was at his election and a concession to his desires -- not a denial of available facilities at the studio;

(e) I fail to see the relevance of the reference to the composers' use of equipment such as tape recorders and turntables. There is no necessity for the use of such equipment to compose music. Indeed, the necessity of such equipment for composers is no different than an actor utilizing a tape recorder while rehearsing his lines;

(f) If Mr. Steiner engaged other persons to perform work that he was employed to perform, this would be contrary to the terms of his employment and his warranties of originality;

(g) Mr. Steiner's presence at the dubbing session does not affect our right to modify the music.

II. The services of Jack Elliott and Allyn Ferguson were loaned to Universal in connection with the television series "BANACEK." If Messrs. Elliott and Ferguson retained the services of other composers, this is a breach of their loanout contract which calls for them to render their services as conductor, composer and arranger. In other words, the contract with the lending corporation is not that the corporation furnish music, but that it furnish the services of Messrs. Elliott and Ferguson to compose.

III. Although Fred Karlin has not been employed by Universal nor worked for Universal as an independent contractor, I respectfully offer the following observations in respect to his affidavit in light of some of the generalizations therein:

(a) Insofar as conducting, orchestrating and arranging is concerned, these services are rendered by individuals who are also "employees" of Universal and are subject to an agreement with another union, the American Federation of Musicians ("A.F. of M."). For such services, Universal provides for vacation pay, contributes to the A.F. of M. pension plan and the industry health and welfare plan. These provisions apply in each case whether specified or not;

(b) Until February, 1972, when this suit was instituted, Universal also contributed to the Motion Picture Industry Pension Plan, Health and Welfare Retiree Coverage and the Health and Welfare Fund with reference to composing services. Universal's contribution to these plans was based upon compensation paid to its employees. Where the services of a

composer are furnished pursuant to a loanout, the contributions on the part of the lending company to such plans and the lending company's payment of payroll taxes are reimbursed to the lender by Universal, if requested to do so and upon substantiation of their prior payment by the lending employer;

(c) It should also be noted that while Mr. Karlin states his corporation contracts to furnish his services, he claims that he decides whether he will accept or decline the engagement. (Karlin Affidavit ¶6) The right to select an engagement is not confined to alleged independent contractors -- it extends to employees as well;

(d) Moreover, while Mr. Karlin states he has preconceived concepts of what he will compose (Karlin Affidavit ¶9), he acknowledges the producing company's authority in determining the mood and concept before making the final decision (Karlin Affidavit ¶10);

(e) Since the operation of the Movieola is governed by an agreement with the Editors Union, it would be violative of that agreement for Universal to permit its composer-employees to operate such equipment without the aid of a music editor.

14. I respectfully submit that the issues in this case are clearly the subjects of a labor dispute between the defendant employers and the plaintiff composer-employees and warrant a denial of plaintiffs' motion for summary judgment. Similarly, plaintiffs' motion for preliminary injunctive relief must be denied for the same reasons. The preliminary relief which plaintiffs now seek is the precise issue which was not resolved over the bargaining table. The effect of granting such relief to plaintiffs prior to a plenary trial of their right to such relief would cause serious and irreparable injury to Universal and MCA.

WHEREFORE, deponent respectfully prays that this Court enter an order denying plaintiffs' motion for summary judgment and preliminary injunctive relief.

Harry Garfield

Sworn to before me this
19th day of November, 1973.

Joyce Ruth Beach
Notary Public

OFFICIAL SEAL
JOYCE RUTH BEACH
Notary Public - California
Principal Office in
Los Angeles County
My Commission Expires Nov. 16, 1977.

EXHIBIT A - SUMMARY OF WITHHOLDING MADE BY UNIVERSAL ON BEHALF OF CERTAIN PLAINTIFFS, BETWEEN JANUARY 1, 1967 AND JUNE 30, 1973 - ANNEXED TO AFFIDAVIT OF HARRY GARFIELD

(2) Name	(3)	(4) Year number	(5) Year amount	(6) W/H Fed Tax	(7) SDI	(8) FICA	(9) Other deductions	(10) Net amount	(11) Date of check	(12) Check number	(13)	(14)	(15)	(16)
			1453.30	436.41	10.53	8.50	15.37	765.97	2-26-73	34800				
Ramstein, Elmer		159496	1306.96	384.48	-	-	38.46	879.22	9-21-71	33900				
			1377.51	402.72	-	-	29.55	1005.06	10-8-71	33900				
			1351.44	397.15	-	-	31.57	1145.72	10-22-71	33900				
			1420.73	81.72	-	-	30.03	1079.78	11-5-71	33900				
			1112.85	336.75	-	-	25.55	650.55	11-12-71	33900				
			1200.00	369.55	-	-	33.60	1240.75	12-9-71	33900				
			1395.38	402.72	13.95	7.25	13.65	756.60	7-20-72	34800				
			1486.32	448.30	14.86	7.29	14.77	798.90	7-27-72	34800				
			1451.40	435.73	14.51	7.07	14.96	782.73	8-2-72	34800				
			1390.83	417.92	13.91	7.32	13.60	756.83	8-9-72	34800				
			1611.95	483.53	-	11.06	16.03	912.93	8-30-72	34800				
			1579.23	481.75	-	-	15.77	939.81	8-30-72	34800				
			1431.09	428.55	-	-	14.06	786.76	9-21-72	34800				
			1406.86	419.69	-	-	13.85	549.33	10-16-72	34800				
			1431.95	356.73	-	-	11.73	757.49	11-07-72	34800				
			1390.07	415.09	-	-	13.73	542.61	12-12-72	34800				
			4685.12	1088.36	46.85	29.63	8.99	3218.29	2-17-71	83266				
									9-28-67	28700				
Linder, Ernest		258222	6522.22						7-5-69	26546				
			4658.30						9-9-68	29100				
			5011.77						12-23-68	29300				
			6300.00						2-4-69	29600		Shares on 81733		
			5167.57	1085.57	51.67	29.80	12.07	3289.96	2-4-69	29600				
			4920.00	1395.11	49.20	29.91	11.89	3179.91	2-4-69	29900				
			7985.00	2225.75	79.50	36.00	16.36	4674.49	10-6-69	29900				
			6795.00	1820.00	67.95	34.10	15.12	3895.09	12-8-69	30100				

(1) Name	(2)	(3)	(4) Item Number	(5) Gross Amount	(6) Withholding Tax	(7) SDI	(8) FICA	(9) Other Deductions	(10) Net Amount	(11) Date of Check	(12) Check Number	(13)	(14)	(15)	(16)
Carter, Leonard			344859	90833	24973	908	3360	1794	57795	9-21-70	31400				
				2106	192	21	78	1010	5611	10-13-70	31400				
				155583	42120	1555	5767	3327	101111	11-18-70	31200				
				135417	36084	1354	6502	3125	88396	11-18-70	31200				
				55478	14951	855	2045	1740	35887	12-29-70	31800				
				250000	59806	2500	13000	2500	172194	10-27-71	26546				
Del Bene, George			291795	75815	22165	958	4599	816	67207	10-3-70	34000				
				64402	12073	644	2993	816	48653	10-27-70	34000				
DeJames, Lance			290616	57012						12-5-68	27200				
				76406	12806	664	3403	1342	48367	11-17-71	33400				
				72069	13958	721	3458	2708	50934	11-28-72	35600				
Drasnin, Robert			313072	453835	145300	4535	26100	4374	366114	2-22-72	83373				
				120754	35494	1205	6479	10388	67383	9-15-72	35800				
				68796	22725	688	3577	6497	25309	10-18-72	35800				
				84221	22708	-	2600	651	57402	11-6-72	35800				
Elliott, Jack			343550	47252						11-1-67	83340				
				47367	14570	474	3473	473	29467	10-20-69	63351				
											83363	} Loans from Elliott - Ferguson			
											36000				
Faith, Percy			340012	1500000						6-29-67	1998				
Ferraro, Ralph			340200	500000						2-7-67	1993				
				75000						2-17-67	1993				
				75000						2-24-67	1993				
				75000						3-3-67	1993				
				75000						3-10-67	1993				
				75000						3-17-67	1993				
				75000						3-24-67	1993				
				177707						8-23-67	1997				
				150957						8-24-67	28500				
				56160						9-11-67	28500				
				105378						9-25-67	28500				
				83511						11-24-67	28500				

(1) Name	(2)	(3) Man Number	(4) Gross Amount	(5) Withholding Tax	(6) SDI	(7) FICA	(8) Other Deduction	(9) Net Amount	(10) Date of Check	(11) Check Number	(12)	(13)	(14)	(15)
Ferraro, Ralph			100000						1-10-68	2004				
			95979						6-10-68	29200				
			178637						9-11-68	29200				
			99877						10-8-68	29600				
			60000						12-5-68	26553				
			16751	3229	589	6745	2496	76704	9-15-69	30000				
			26705	9.03	-	-	1363	36449	10-30-69	29800	Same as above not on contract list			
			62467	14850	600	2989	1509	44297	7-28-70	31130				
			80081	18194	588	3700	2029	57500	8-28-70	31700				
			92935	22051	-	-	2257	68627	9-30-70	31700				
			61163	14594	-	-	1940	46704	9-25-70	31700				
			61825	11693	618	3015	1946	44053	1-21-71	32200				
			15000	3600	150	732	150	10718	2-12-71	31301	Amount not on contract $150. for a year			
Freeberg, Jerry		348521	145778	33585	1458	6037	1515	83387	11-10-70	31000				
			34780	11188	347	1600	3604	17795	6-9-72	31300				
										33000				
										2600	Loan from Employee Protection			
										2590				
Fine, Sidney		349146	25000						1-11-67	27500	No contract			
			35000						7-20-67	28500				
			24157						8-11-67	28500				
			13670						9-11-68	29200	No contract			
			24232	5897	242	1162	564	16476	4-25-69	80000				
			700.	20221	700	3360	350	45369	9-21-70	31009	Not on list not to appear			
										83193	5061 cancelled file. Delivery by air EOP type currency (1967)			
Fox, Charles														
Frank Ewald		367550	29690						1-6-67	28500				
			23920						1-13-67	28500				
			23721						1-20-67	28500				
			21999						1-30-67	28500				
			25000						1-31-67	28500				
			30221						2-6-67	28500				
			34956						2-28-67	28500				
			75570	19177	756	3930	6733	45376	9-19-72	31900				

(1) Name	(2)	(3)	(4) Item Number	(5) Gross Amount	(6) Withholding Tax	(7) SDI	(8) FICA	(9) Other deductions	(10) Net Amount	(11) Date of check	(12) Check Number	(13)	(14)	(15)	(16)
Barfield, Thomas			38936	150000	43200	1500	7200	886	98114	5-6-69	2017	?			
											2037				
Lindenberg, William			3949.0	28145						9-10-68	29016				
				49959						9-25-68	29600				
				27727						10-18-68	29100				
				83306						10-24-68	29300				
				98983						11-14-68	29100				
				25000						12-5-68	29553				
				60799						12-18-68	29300				
				101172	30640	1011	5916	10067	53947	1-29-73	31500				
				475656	153271	4787	28001	49581	243116	2-22-73	83386				
				315647	98286	3152	15156	1771	197265	3-12-69	26558				
				500000	162065	2150	12241	—	323544	4-4-69	2032				
				315845	98358	—	—	1771	215716	6-10-69	26523				
				215283	65172	—	—	1771	148340	6-20-69	26522				
				42111	12645	—	—	443	29019	7-21-69	80028				
				7000.	2016.40	—	—	886	4894.99	9-17-69	2032				
				95822	28786	—	—	886	65277	9-30-69	30702				
				100451	30213	—	—	886	69152	10-7-69	84700				
				98500	29537	—	—	886	67977	10-20-69	29900				
				176095	48620	1745	8376	1771	113983	2-2-70	26587				
				394380	116785	390.	13410	1771	257995	2-24-70	26593				
				88158	24592	—	—	1348	63566	3-11-70	29900				
				124188	35764	—	—	1348	87096	6-22-70	31200				
				85760	23076	—	—	1348	61352	7-7-70	31207				
				8909	1145			886	6878	8-14-70	32000				
				109785	30284			1348	78173	9-3-70	31200				
				226896	65417			1348	160151	10-14-70	31200				
				67697	17657			886	49152	10-20-70	31900				
				376796	92735			1771	283590	11-19-70	26597				
				268834	77098			1348	187408	12-18-70	83358				
				44678	10754			1348	33559	12-24-70	31200				
				25433	8022	254	1323	1771	18603	1-5-71	90160				
				213755	49802	2214	10511	1771	152077	2-10-71	31308				
				13500.	2460.32	1463	9687	886	104596	2-19-71	?	No picture in microfilm			
				21035	4715.52	—	—	1771	161912	4-26-71	83366				
				5922	1256.09			886	45786	7-9-71	32400				
				83702	18424	—	—	1348	67950	7-26-71	33300				
				104276	27759			1348	79537	8-17-71	83400				
				26358	5993			1771	201851	9-2-71	26594				

Name	Man Number	Gross Amount	W H T	S D I	F I C A	Other Deduction	Net Amount	Date of Check	Check Number			
Hollenberg, William		877.16	184.76			13.48	641.12	10-1-71	33300 A			
		1003.82	224.48			13.48	766.46	10-14-71	33400 A			
		1006.07	224.83			13.48	767.97	10-28-71	34111 A			
		2944.33	953.10	29.95	155.73	25.69	1579.26	3-1-72	31319 A			
		779.46	225.45	7.80	40.53	7.98	497.87	8-4-72	35000	Contract check 3.5.68 - Called by Pilot - 35000 to Calif no Comm		
		560.47	148.69	5.61	29.15	4.67	372.85	8-31-72	35900 A			
		978.28	294.87			90.44	592.97	9-15-72	35900 A			
		2072.53	658.84			197.79	1215.90	10-26-72	35110 A			
		2500.	654.49			246.95	1378.76	11-3-72	31308 A			
		1609.	407.	-	-		1202.0	8-16-70	32100 32200 32300	32000 had no comment on the memo		
Hudson, David	415635	10000						2-1-67	83336 A			
		5167						2-9-67	83336 A			
		3394.93						7-28-67	28500 A			
		2500.00						8-24-67	28500 A			
		2767.61						9-28-67	26520 A			
		1555.78						12-27-67	29000 A			
		17500.00						4-15-68	2012 A			
		9.39						7-29-68	29.00 A			
		25.00						8-8-68	29.00 A			
		1.93.26						9-6-68	29.00 A			
		1750.00	547.77	17.50	84.03	69.	1131.70	1-4-69	2017 A			
		1750.00	547.77	17.50	84.00	69.	1131.70	1-11-69	2017 A			
		1750.00	547.77	17.50	84.00	69.	1131.70	1-18-69	2017 A			
		1750.00	547.77	17.50	84.00	69.	1131.70	1-25-69	2017 A			
		1750.	547.77	3.03	33.73	69.	1178.70	2-1-69	2017 A			
		1750.	547.77	-	-	69.	1213.70	2-8-69	2017 A			
		1750.	547.77			84.	1203.37	2-15-69	2017 A			
		1750.	547.77			84.	1203.37	2-22-69	2017 A			
		1750.	547.77			84.	1203.37	3-1-69	2017 A			
		1750	547.77			84.	1203.37	3-8-69	2017 A			
		250.	41.46	2.50	12.	84.	185.04	7-15-70	31500 A			
		6673	1531.17	6.77	3.03	13.48	4263	9-22-70	31700 A			
		4555.	1080.58	45.55	278.81	177.1	3133.36	2-1-71	31305 A			
		3500.	870.08	24.	142.52	177.1	2495.59	2-2-71	2047 A			
		1750.	408.52			73.5	1332.60	2-12-71	2047 A			
		1750.	408.52			73.5	1332.60	2-20-71	2047 A			
		1750.	408.52			91.8	1324.60	2-27-71	2047 A			
		8750.	2013.74			4458	669.98	3-2-71	2047			

EXHIBIT A - SUMMARY OF WITHHOLDING MADE BY UNIVERSAL ON BEHALF OF CERTAIN PLAINTIFFS, BETWEEN JANUARY 1, 1967 AND JUNE 30, 1973 - ANNEXED TO AFFIDAVIT OF HARRY GARFIELD

(1) Name	(2)	(3)	(4) Gross Number	(5) Gross Amount	(6) W/H	(7) SDI	(8) FICA	(9) Other deduct.	(10) Net amount	(11) Date of Check	(12) Pacific Number	(13)	(14)	(15)	(16)
Gruwell, David				29[illegible]98	7[illegible]29			13[illegible]8	2[illegible]441	8-27-71	3[illegible]00 A				
				10533[illegible]2	2[illegible]53[illegible]			1771	79[illegible]997	9-22-71	2048 A				
				80807	2[illegible]70	80[illegible]	4[illegible]02	7[illegible]59	4[illegible]468	2.22.72	53380 A				
				2500	59060	2[illegible]-	130-	2[illegible]578	1[illegible]086[illegible]	4-17-72	3[illegible]3.3 A				
											20[illegible]3	Lawsuit	Jane Reed v. Pacific		
											31500				
											31600				
Hamblock, Marion		437002		5[illegible]4[illegible]	17878	81[illegible]	4[illegible]92	8[illegible]86	57[illegible]61[illegible]	8-27-71	3[illegible]800 A				
				86[illegible]3	19078	86[illegible]	4[illegible]40	17[illegible]50	60[illegible]87	10-6-71	3[illegible]800 A				
Hazard, Richard		44[illegible]018		9[illegible]28	2[illegible]1[illegible]	9[illegible]	[illegible]5[illegible]	1882	6[illegible]1[illegible]85	1-20-69	83353 A				
				[illegible]7[illegible]4	4397[illegible]	1[illegible]7	[illegible].[illegible]	-	10451	11-10-70	50087	Remainder 83353			
				[illegible]7791	13289	578	30[illegible]5	4[illegible]3	[illegible]0[illegible]6[illegible]	8-9-71	33700				
				25[illegible]41	6195	263	14[illegible]6	4[illegible]3	19[illegible]5[illegible]	8-17-71	33700				
				20743	4345	208	1078	4[illegible]3	1[illegible]4619	8-30-71	33700				
				43085	9757	431	2[illegible]10	4[illegible]3	30[illegible]1[illegible]	9-13-71	33700				
				17274	13643	593	30[illegible]2	4[illegible]3	41[illegible]5.3	9-13-71	33700				
Jones, Maurice		49[illegible]49		W[illegible]0000	7[illegible]9256	7[illegible]00	37[illegible]40	19[illegible]12	16[illegible]86[illegible]6[illegible]	1-30-69	2[illegible]W[illegible] A				
				4[illegible]1[illegible]40	1[illegible]583[illegible]	-	-	30[illegible]3	3[illegible].7[illegible]26[illegible]	2-4-69	29801 A				
				30000	9[illegible]691			23[illegible]86	20[illegible]49[illegible]3	5-13-69	2[illegible]2[illegible] A				
				30000	9[illegible]691			2[illegible]38[illegible]	20[illegible]49[illegible]3	5-31-69	2[illegible]2[illegible]				
				30000	9[illegible]691			2[illegible]38[illegible]	20[illegible]49[illegible]3	7-7-69	2[illegible]2[illegible]				
				30000	9[illegible]691			[illegible]38[illegible]	20[illegible]49[illegible]3	6-16-69	2[illegible]2[illegible]				
				30000	9[illegible]691			2[illegible]38[illegible]	20[illegible]49[illegible]3	7-21-69	2[illegible]2[illegible]				
				30000	9[illegible]691			2386	20[illegible]49[illegible]3	7-28-69	2[illegible]2[illegible]				
				30000	9[illegible]691			2386	20[illegible]49[illegible]3	7-5-69	2[illegible]2[illegible]				
				30000	9[illegible]691			2386	20[illegible]49[illegible]3	7-12-69	2[illegible]2[illegible]				
				30000	9[illegible]691			2386	20[illegible]49[illegible]3	7-19-69	2[illegible]2[illegible]				
				30000	9[illegible]691			2386	20[illegible]49[illegible]3	7-26-69	2[illegible]2[illegible]				
Johnson, James		447803		639[illegible]	13082	639	33[illegible]3	38[illegible]	45[illegible]981	8-23-71	3[illegible]800 A				
Jones, Gregory		503630		15[illegible]0000						3-10-67	1989				
				500000						8-9-67	2007	Lawsuit settled 1966 - Thompson			
				150000						10-6-67	2007	paid hired on contract basis			
				150000						11-17-67	2007				

Name	Plan Number	Gross Amount	WHT	SDI	FICA	Other deducts	Net Amount	Date of Check	Pretax Number	
Jones, Jimmy		1750						11-30-67	2007	
		1500						12-1-67	2007	
		1500						12-8-67	2007	
		1500						12-15-67	2007	
		1500						12-22-67	2007	
		750						12-29-67	2007	
		5000						1-31-67	26578 A	
		1,1508						7-31-67	28700 A	
		1500						7-31-67	28700 A	
		9894						8-4-67	28700 A	
		5000						9-15-67	26519 A	
		10000						11-10-67	2015 A	
		150000						12-29-67	2007	
									2015	
									36000	Loaned from Mariana Productions
									36100	
									36200	
		71630	19183	716	3795	1946	41760	8-29-72	91890	
Mariana, Henry	602099								2003	
									5110	Loaned from Mariana Enterprises
									33200	
									33300	
									33400	
Markowitz, Raoul	602940	305746	98240	3057	17886	34891	151672	3-8-73	35120 A	
Wells, Gilbert	602360	185737						7-8-68	26547 A	
		20590						1-5-68	25700 A	
		241376	76924	2414	14120	21476	147442	1-8-73	83383 A	Loan Became 3rd
		82712	19805	827	4839	4059	53182	2-22-73	35125 A	
		203770	63386	15-	11921	17340	109693	3-6-73	93185	Same as 31345
		306191	95985	-	-	26432	183775	5-3-73	31346 A	
		5000	943	50	210	-	3747	1-15-69	26547 A	
		367945	110585	3679	17661	1771	132249	8-22-69	26571 A	
		10000	2589	10-	48-	886	6743	2-4-70	30500	
		101218	25285	1012	4859	886	69376	6-26-70	31200 A	
		16763	2305	168	805	886	10996	8-26-70	31200 A	
		87894	19785	-	-	886	67023	9-18-70	31200 A	
		115316	29515	999	5515	886	78381	9-18-70	31200 A	

2 Name	3	4 Plan Number	5 Gross Amount	6 W/H T	7 SDI	8 FICA	9 Other deducts	10 Net Amount	11 Date of check	12 Pictura Number	13	14	15	16
Mills, Richard			1000-	24920	-	-	$56	74194	1-13-70	32300 A				
			10000-	29920	-	-	-	70560	10-24-70	2034				
			4500-	39920			686	109174	12-9-70	32300 A				
			15000-	336998	74-	40560	8852	1106756	1-22-71	2034 A				
			55812	18791	-	-	826	68331	7-7-71	33500 A				
			6902	14051	-	-	1385	53667	7-27-71	33300 A				
			12607	28310			556	96875	8-11-71	33500 A				
			14942	32277			1385	105337	8-26-71	33300 A				
			1000-	21792			566	77322	9-30-71	33500 A				
			33092	5331			1385	26033	11-26-71	33300 A				
			247050	51810	2470	15806	43044	168836	2-7-72	33375 A				
			256901	78262	2529	16361	31447	141313	2-18-72	3316 A				
			7500-	43366	-	17455	5926	452392	5-17-72	4053 A				
			312201	105582			24176	262409	6-23-72	4053 A				
			201997	79997			21190	140810	9-14-72	35114 A				
			136640	39219			9451	57970	10-2-72	35105 A				
			121650	33820			7956	79575	10-30-72	35103 A				
Murray, Viola		65930	166666	44735	7400	29060			1-20-67	1996 A				
			333334						2-12-67	1996 A				
										2005	Loaned from Murray Production			
										2027				
										2040				
										38129				
Murray, Leon		67126	4000-						5-9-67	1999 A				
			4000-						7-19-67	1999				
			4500-						7-26-67	1999				
			18255						11-6-67	33200 A				
			56490						1-4-67	26509	1966 contract on file			
			5870						1-4-67	33200 A				
			12026						1-12-67	33200 A				
			32140						1-23-67	33200 A				
			30761						1-31-67	33200 A				
			26793						2-6-67	33200 A				
			15577						2-21-67	33200 A				
			39972						3-2-67	26512 A				
			29153						3-9-67	33200 A				

(2) Name	(3)	(4) Man Number	(5) Gross Amount	(6) WHT	(7) SDL	(8) FICA	(9) Other Deduct	(10) Net Amount	(11) Date of Check	(12) Check Number	(13)	(14)	(15)	(16)
Murray, Lyn			21327				1		3-30-67	25200 A				
			21095				2		4-5-67	25400 A				
			41746				3		8-11-67	25500 A				
			30581				4		8-11-67	25500 A				
			16716				5		8-15-67	25800 A				
			37436				6		8-22-67	25900 A				
			5003				7		9-6-67	25900 A				
			24312				8		9-6-67	25900 A				
			35772				9		9-13-67	25900 A				
			38150				10		9-29-67	25900 A				
			17418				11		9-29-67	25900 A				
			49816				12		10-19-67	25900 A				
			17703				13		11-2-67	25900 A				
			57565				14		11-27-67	25900 A				
			4000 -				15		7-24-68	2021 A				
			9500 -				16		8-19-68	2021 A				
			43292				17		8-30-68	29600 A				
			69427				18		9-19-68	29600 A				
			73694				19		12-26-68	29200 A				
			693				20		1-23-68	25213 A				
			148585				21		6-21-68	26555 A				
			500.	1586	5-	20.	22	10. 30433	3-6-69	2027 A				
			293673	85184	2937	14097	23	7645 183810	7-10-69	26551 A				
			76404	18109	767	3437	24	1338 47983	9-30-69	30700 A				
			49485	10464			25	1876 37140	10-30-69	30600 A				
			100376	27267			26	2590 70235	11-13-69	30700 A				
			2500 -	76724	2078	11893	27	50 - 154305	4-8-70	5081 A				
			105488	21769	1055	5063	28	3861 73720	4-7-70	26577 A				
			118494	30093			29	3698 80703	7-23-70	31717 A				
			74485	16890			30	2818 50776	8-20-70	31700 A				
			55285	5777			31	16- 38308	11-25-70	31900 A				
			14315	3516			32	786 10513	11-25-70	31900 A				
			48485	20212	969	4518	33	2181 59105	1-27-71	83365 A				
			100207	18010	1001	5211	34	3775 72505	3-4-71	31306 A				
			70273	14057	491	3655	35	2492 49788	8-18-71	33900 A				
			75983	15375			36	2406 58102	9-15-71	34600 A				

Name	Man Number	Gross amount	WHT	SDI	FICA	other deducts	Net amount	Date of check	Pretax Number
Riddle, Nelson	773764	485.77	108.88	4.86	28.92	2.69	310.32	2-15-73	35700
		675.00	152.41	6.75	39.11	11.18	465.75	8-6-71	33600
		437.44	96.97	4.38	12.35	6.80	316.94	8-6-71	33600
		870.49	193.66	8.71	47.31	12.76	607.85	8-20-71	33600
		698.03	162.17	6.98	36.71	11.41	480.76	9-13-71	33600
		535.94	120.58	5.35	27.72	9.76	367.93	10-4-71	33600
		494.10	111.14	2.42	24.70	11.37	340.27	10-18-71	33600
		220.28	151.09	-		16.06	55.13	11-1-71	33600
		2159.58	68.98	27.60	153.30	254.03	1810.07	12-31-71	3317
		707.61	207.49	7.60	34.51	67.83	392.38	2-16-72	34944
		535.58	127.78	5.35	27.39	29.80	344.05	5-11-72	35700
		622.10	157.76		33.29	38.71	392.34	5-18-72	35700
		821.96	221.87			60.80	539.29	9-6-72	35700
		616.54	166.71			41.51	408.32	9-13-72	35700
		618.-	155.36			38.04	424.60	9-20-72	35700
		476.50	119.78			29.66	358.17	9-25-72	35700
		411.82	94.78			20.23	336.31	12-15-72	35700
Rogers, Dalton	785745	375.-						2-2-67	80005 Seaman 93348
		200.-						3-2-67	76512
		5000.-						5-1-67	76537
Ross, David	788286	1202.53	254.17	12.03	69.55	19.49	845.51	9-13-71	34106
		3194.80	757.34	31.95	166.13	49.47	2210.23	11-22-71	34119
		1098.45	308.67	10.98	57.12	8.63	679.05	8-25-72	36000
Rosenman, Leonard	790081	1870.24						1-27-67	27700
		619.22						2-23-67	26511
		2551.07						9-12-67	28500
		1750.-						5-2-68	2016
		1750.-						8-9-68	2016
		1750.-						6-16-68	2016
		1750.-						8-23-68	2016
		1750.-						8-30-68	2016

EXHIBIT A - SUMMARY OF WITHHOLDING MADE BY UNIVERSAL ON BEHALF OF CERTAIN PLAINTIFFS, BETWEEN JANUARY 1, 1967 AND JUNE 30, 1973 - ANNEXED TO AFFIDAVIT OF HARRY GARFIELD

Name	Item Number	Gross Amount	WHT	SDI	FICA	Other deduct	Net Amount	Date of check	Pay Number	
Iranian, Leonard		1,000 -						9-6-68	2016	
		1,750 -						9-13-68	2016	
		1,750 -						9-20-68	2016	
		1,750 -						9-27-68	2016	
		1,750 -						10-4-68	2016	
		350 -						9-6-68	2016	
		500 -						7-1-68	28900 A	
		170705						7-1-68	29200 A	
		205.24						7-16-68	29100 A	
		177.67						7-17-68	28900 A	
		1,049.81						10-7-68	28900 A	
		221.53						1-5-68	28500 A	
		2000 -						2-1-68	28900 A	
		4000 -						2-21-68	28900 A	
		1,500.79						6-7-68	29200 A	
		1,240.63						6-13-68	28900 A	
		422.50	103.75	7.41	22.83	2.00 Y	286.98	1-15-69	27554

Name	Man Number	Gross Amount	WHT	SDI	F.I.C.A.	Other deduct	Net Amount	Date of check	Check number
Reisman, Leonard	1	137858	37245			24625	95203	11-17-70	31100
		70407	19770			17900	65607	12-11-70	31100
		60000	11272	50-	260-	6770	34796	12-29-70	31301
		94130	22663	20-	14560	11260	67885	2-5-71	31301
		31385	69603			4910	23367	5-13-71	83357
		1500	33163			2586	11475	6-2-71	32500
		1500	33163			2586	11475	6-2-71	32500
		13740	29476			2233	10303	7-9-71	32500
		13746	29476			2233	10303	7-22-71	32500
		13740	29476			2233	10303	7-30-71	32500
		14370	31305			2510	10875	8-6-71	32500
		14380	31307			2510	10876	8-6-71	32500
		57152	18053			1758	47345	10-6-71	32500
		57152	18053			1758	67345	10-6-71	33900
		57152	18053			1758	67345	10-6-71	32500
		11090	25507			2195	10071	11-1-71	32500
		90476	20393	905	4704	9450	56810	6-16-72	32600
		140476	20393	1000	7300	14650	74711	6-16-72	32600
		279650	80340	2776	14542	29160	145815	7-20-72	32600
		134870	40761	1393	6987	13980	77799	7-31-72	32600
		134740	40390	847	7006	14020	78477	8-4-72	32600
		134740	40390	—	1806	14020	78547	8-16-72	32600
		139827	42170			14580	83077	9-27-72	32600
		139827	42170			14580	83077	9-27-72	32600
		130163	38738			13493	78087	11-3-72	32600
		134605	40343			13781	80481	12-22-72	32600
Remmers, George	793118	77110	18491	771	4511	4694	48693	1-23-73	31324
Schifano, Dario	812681	2500						3-29-68	26500
		2500						5-29-68	26506
		9750	29494	85	5113	9066	47678	2-26-73	20588
		84760	26852		9067	8350	48953	2-16-73	2058
		200000	61082	6762	31976	6912	130768	1-21-69	2020
		17500	50801	1753	84	362	11313	5-9-70	2036
		17500	50801	1753	84	856	11363	5-4-70	2036
		17500	50801	1753	84	856	11363	5-16-70	2036
		17500	50801	1753	84	856	11363	5-23-70	2036
		17500	50801	4-	3840	856	11978	5-30-70	2036

Name	Man Number	Gross Amount	WHT	SDI	FICA	Other deduct	Net amount	Date & check	Auction Number	
		1750	50801			886	1733 13	6-2-70	2036	
		1750	50801			886	1733 13	6-18-70	2036	
		1750	50801			886	1733 13	6-26-70	2036	
		1750	49098			886	1750 16	6-27-70	2036	
		1750	49098			886	1750 16	7-8-70	2036	
		17500	39483	74-		40560	10273 55	28.853	1-8-71	2039 ^
		1769 80	39505				443	97058	2-11-71	33794 ^
		68452	15532				443	55853	8-2-71	33700 ^
		4450-	29485	74-		468-	38648	48720 7	3-8-72	2051 ^
		9452-	29435					55815	9-22-72	2051 ^
		1149-	7455	6-			10720	67926	8-17-72	34900 ^
									2014	Paid by Maywood
Sheldon, Leo	836642	5585	1471	569		2030	1876	37525	1-10-70	29900 ^
		35029	6470	350		1681	1678	24550	2-2-70	29700 ^
		4893	7469	489		3345	1918	34216	6-21-70	31700 ^
		1550	2472	155		735	1050	11107	6-27-70	31700 ^
		50711	10508	5108		2434	1836	35445	9-1-70	31700 ^
		47160	12403	6172		2744	1400	39101	10-5-70	31700 ^
		676	773				943	9555	11-13-70	31400 ^
		7626	12476				2497	57152	12-21-70	2044 ^
Wawro, Fred	870592	7454	2354	743		3478	2051	40658	8-14-69	30000 ^
		118345	30427	1188		57052	25716	749.74	1-31-69	30000 ^
		1054	3874	1054		5468	1938	73827	8-18-71	33800 ^
		7965	17753	797		4102	1683	55279	8-26-71	33800 ^
		5210	11102	521		2710	1407	36230	8-31-71	33800 ^
		7967	17758	797		4103	1683	55293	9-10-71	33800 ^
		8026	1794-	802		4174	1689	55703	10-11-71	33800 ^
		4391	9876	439		2284	1325	30694	10-15-71	33800 ^
		6758	13896	676		3300	1500	44000	11-23-71	33800 ^
		5168	11040	518		2628	1493	36333	12-10-71	33800 ^
		40949	134824	4095		21294	43660	405618	3-2-72	3318 ^
		30874	10210	30-		16054	31753	155813	10-13-72	3511 ^
Tartaglia, John	892469	4744	9773	474		2467	886	33894	9-14-71	34200 ^
		4191	8296	419		2180	886	30034	10-1-71	34218 ^
		4865	10012	487		2530	886	34737	10-7-71	34200 ^
		4996	10215	495		2574	886	35376	10-12-71	34200 ^
		329-	6732				886	25768	10-29-71	34200 ^
		6638	14155				886	51187	10-25-71	34200 ^
		5345	11164				886	41401	11-5-71	34200 ^

Name	Plan Number	Gross Amount	WHT	SDI	FICA	Other deducti	Net Amount	Date of Check	Picture Number
Fantaglia John		65915	13440			556	50157	12-6-71	34900 ^
		102421	31269	1029	5352	7495	55276	2-14-72	34128 ^
		85776	24258	830	4315	6678	46849	9-1-72	35500 ^
		118942	50425	1193	9586	16670	102022	9-12-72	35300 ^
		66488	12956		76-	4880	46002	9-20-72	35500 ^
		50537	7393			3370	39826	9-26-72	35500 ^
		67790	13630			4791	49569	10-16-72	35500 ^

EXHIBIT B - LIST OF COMPOSERS AND LYRICISTS -
ANNEXED TO AFFIDAVIT OF HARRY GARFIELD

EXHIBIT B

Elmer Bernstein
Johnny Williams
Leo Shuken and Jack Hayes
Jerry Goldsmith
Pete Rugulo
Mort Stevens
David Shire
Dave Grusin
Elliott Kaplan
John Cacavas
Lynn Murray
Benny Carter
Cy Coleman
Ken Darby
Alfred Newman*
Frank De Vol
Ralph Ferraro
Sidney Fine
Lennie Hayton*
William E. Justis
Gus Levene
Jack Marshall*
Eddie Sauter
Robert Prince
Pat Williams
Neil Hefti
Quincy Jones

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* Deceased

EXHIBIT C - AGREEMENT DATED JANUARY 9, 1973 -
ANNEXED TO AFFIDAVIT OF HARRY GARFIELD

DOCUMENT

MUSIC EMPLOYMENT AGREEMENT

73 157

AGREEMENT dated January 9, 19 73, between UNIVERSAL PREFERENCE NO. , a division of Universal City Studios, Inc. ("Producer"), and IALO SCHIFRIN ("Employee").

1. MAJOR PROVISIONS: Producer employs Employee to render services for Producer for the photoplay now entitled "CHARLEY VARRICK" (#02058) ("the Photoplay") in the capacities indicated in Paragraph 2, and Employee accepts such employment. Employee shall comply to the best of Employee's ability with Producer's reasonable directions, rules, instructions and regulations. Producer's judgment shall be final in all matters, including matters involving artistic taste.

a. The term of employment ("the Term") commences on January 9, 1973 and shall continue until the completion of all services required by Producer, but no longer than the time required to complete recording of the score.

b. The musical material is to be delivered on or before February 13, 1973. Time is of the essence.

c. Producer agrees to pay Employee Eighteen thousand five hundred dollars ($ 18,500.00) payable as follows: (manner of computation to be indicated by (x) in the blank box appearing before each applicable sub-paragraph)

[X] (i) Nine thousand two hundred fifty dollars ($ 9,250.00) as an advance upon execution of this agreement.

[ ] (ii) _____ ($) as an advance upon commencement of the Term.

[ ] (iii) _____ ($) in ( ) weekly installments of _____ ($) each, the first of which shall become due and payable to Employee on Producer's regular payday following expiration of the first full week of services hereunder, and the remaining installments shall become due and payable to Employee weekly thereafter for services rendered to the Saturday preceding until paid in full.

[X] (iv) Nine thousand two hundred fifty dollars ($9,250.00) upon completion of required services.

[ ] (v) _____

d. The music publisher selected by Producer is Duchess Music Corporation ("the Publisher") a publisher member of Broadcast Music, Inc. ("said Performing Rights Organization").

e. Piano copy royalty is six cents (.06 c) per copy.

2. SERVICES:

a. Employee shall render services in the following capacities (to be indicated by (x) in the blank box appearing before each sub-paragraph):

[X] (i) As a composer to compose an original musical score, including all preparatory work.

[ ] (ii) As an arranger to arrange and orchestrate the musical score.

[X] (iii) As a conductor to direct and conduct the recording orchestra in the recordation of the musical score.

[ ] (iv) As a lyricist to write original lyrics for any music composed hereunder and for any music supplied to Employee by Producer hereunder.

(v) As a songwriter to write original

[X] Music (and/or)

[ ] Lyrics

for musical composition(s).

[X] (vi) In such other capacities as Producer may require regarding the preparation, rendition, recordation, reproduction and or synchronization of music.

b. The musical material prepared by Employee as a composer and/or arranger shall be delivered to Producer's Music Department in the form of "full orchestral scores".

c. From time to time during the Term, without additional compensation, Employee shall make such revisions in the musical material as Producer may require.

3. NOTICES: Any notice desired or required to be served on Employee hereunder may be given to Employee orally (unless otherwise provided herein) or in writing, or by mailing it by certified or registered mail or telegraphing it, addressed to Employee at as follows:

c/o Bart/Levy Associates
8601 Wilshire Blvd.
Beverly Hills, Calif. 90211

the date of such giving, mailing or telegraphing shall be deemed the date of service of such notice. Any notice desired or required to be served on Producer hereunder shall be given by delivery to Producer by certified or registered mail, return receipt requested, or by telegraph at 100 Universal City Plaza, Universal City, California 91608, marked for the attention of the Law Department; the date of Producer's receipt of such notice shall be deemed the date of service of such notice. Any notice desired or required to be served on Publisher hereunder shall be given by delivery to Publisher at 100 Universal City Plaza, Universal City, Ca. 91608 by certified or registered mail, return receipt requested, or by telegraph; the date of Publisher's receipt of such notice shall be deemed the date of service of such notice. Any party may designate a substitute address by written notice to the other.

4. DEFINITIONS: As used herein, unless the context expressly provides to the contrary:

a. "Here", as a prefix in such words as "herein", "hereof" and "hereunder" refers to this agreement.

b. "Includes" and "including" are illustrative and not limitative.

c. The "musical material", means the material prepared by Employee hereunder.

d. "Name and likeness" means name, professional name, likeness, photograph, caricature, biography, and actual or simulated likeness, signature and voice, or any of them.

e. "Person", means any corporation, company, partnership, joint venture, trust or any other business entity or firm, as well as any natural person.

f. "Photoplay" means any recording for future visual reproduction (with or without sound) using any devices now or hereafter known or conceived.

g. "Related producer", means any corporation of which a substantial portion of the common stock is owned by stockholders who own a substantial portion of the common stock of Producer, and the parent, subsidiary and affiliated companies and divisions of any such corporation or of Producer. For this purpose, 50% or more shall be deemed to be a substantial portion. Any joint venture to which Producer or any related Producer is a party shall itself be deemed to be a related Producer.

h. "Related publisher", means any corporation of which a substantial portion of the common stock is owned by stockholders who own a substantial portion of the common stock of Producer, and the parent, subsidiary and affiliated companies and divisions of any such corporation or of Producer. For this purpose, 50% or more shall be deemed to be a substantial portion. Any joint venture to which Producer or any related Publisher is a party shall itself be deemed to be a related Publisher.

i. "Such as" is illustrative and not limitative.

j. "This agreement", means this entire Employment Agreement (including any attached provisions, riders, exhibits and schedules), as it may now or hereafter be amended or supplemented by written agreements signed by Producer and Employee.

5. COMPENSATION:

a. If Employee renders services as an arranger pursuant to a written agreement with Producer so to do, Producer shall pay Employee additional compensation at the minimum per score page rate payable to arrangers under the now current Producer-American Federation of Musicians of the United States and Canada Collective Bargaining Agreement.

b. Unless otherwise provided herein, the compensation set forth herein shall be deemed to include compensation at the minimum applicable labor organization rates for services of the type and character required of Employee hereunder and no additional compensation shall be payable for such services.

c. The compensation provided for hereunder (subject to the provisions of this agreement, including paragraphs 12 and 13) is full consideration for all of Employee's agreements hereunder. Nothing in this agreement shall obligate Producer to use Employee's services hereunder, or the results and proceeds of Employee's services, or to produce, release, distribute, exhibit, advertise or exploit the Photoplay or, subject to paragraph 11, to advertise or exploit Employee's name or likeness in connection therewith, or to publicize Employee in any way, and Producer shall not be liable to Employee in any way for failing to do so in whole or in part.

d. Any vacation pay accruing to Employee by reason of Employee rendering services as a conductor or arranger shall be deemed included in the compensation set forth in Paragraph 1.e.

6. ROYALTIES:

a. If Employee fully complies with the terms hereof, Producer agrees to direct Publisher to pay Employee the following royalties for the following uses of the musical material:

(i) The piano copy royalty on all regular piano copies sold and paid for in the United States, its territories and Canada as indicated in Paragraph 1.e.

(ii) Fifty percent (50%) of all net sums received by Publisher for regular piano copies, orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and/or instruments, and/or other copies sold and paid for in countries other than the United States and Canada; provided, that if such copies are sold by a Related publisher or any assignee or licensee of Publisher which is actually doing business in a country other than the United States and Canada, ten per cent (10%) of the wholesale selling price (after trade discounts, if any) of each copy sold and paid for.

(iii) Ten per cent (10%) of the wholesale selling price (after trade discounts, if any) of each copy sold and paid for in the United States and Canada or for export from the United States of orchestrations, band arrangements, octavos, quartets, arrangements or combinations of voices and/or instruments, and/or other copies other than regular piano copies.

(iv) As to any song book, song sheet, folio, or similar publication containing at least four (4) musical compositions in which the musical material is included: (a) If such publication is issued by Publisher or a Related publisher, an amount determined by prorating ten percent (10%) of the wholesale selling price (after trade discounts, if any) of the copies sold equally among the total number of copyrighted musical compositions included in such publication if such publication does not contain more than twenty five (25) musical compositions, and if such publication contains more than twenty five (25) musical compositions, an amount determined by prorating said ten percent (10%) plus an additional one-half percent (1/2%) for each additional musical composition; (b) If such publication is issued by a licensee of Publisher, that proportion of fifty percent (50%) of the gross amount received by Publisher from the licensee as the number of uses of the musical material under the license and during the license period bears to the total number of uses of Publisher's copyrighted musical compositions under the license during the license period. Musical compositions and arrangements in the public domain and/or for which no royalties are payable shall be excluded in computing the number of Publisher's copyrighted musical compositions. Royalties on publications containing less than four (4) musical compositions shall be payable at the applicable regular rates set forth in Paragraphs 6.a.(i), (ii) and (iii).

(v) Fifty percent (50%) of all net sums actually received by Publisher for any licenses (including statutory royalties) authorizing the manufacture of parts of instruments serving to mechanically reproduce the musical material or to reproduce the musical material upon electrical transcriptions for broadcasting purposes, or to use the musical material in synchronization with sound motion pictures produced by anyone other than (1) Producer, (2) a Related producer, (3) any person using the musical material in a motion picture financed substantially by or to be distributed by Producer or a related producer (as to the three excepted persons in this sentence, no royalties or other payments shall be due); except that Employee shall not be entitled to any share of the monies distributed to Publisher or a Related publisher by the Performing Rights Organization anywhere in the world, or other source, which makes a distribution to composers, either directly or through another performing rights organization or other person, society, association or organization. If such licenses are administered by an agent, trustee, or other administrator acting for a substantial part of the industry and not under the exclusive control of Publisher, Publisher in determining the net sums actually received, may deduct from gross license fees, fees paid to such agent.

b. The foregoing royalties shall apply only when (i) all of the words and music of the material used have been prepared solely by Employee or (ii) the music has been prepared solely by Employee and no lyrics have been written for the material. If the material is first published without lyrics, and lyrics by another person are thereafter added, the lyricist will not share in the royalties of any publication of an instrumental version of the material. If other persons are involved in the composing of music and/or lyrics for incorporation in the material prepared by Employee hereunder, the foregoing rates shall apply, but one-half (1/2) shall be allocated to the composer of the music and one-half (1/2) to the writer of the lyrics, there being no allowance for the title. If there be more than one composer of the music and/or more than one writer of the lyrics, then they shall agree between themselves upon a division of their half of the foregoing rates, but in the absence of such agreement, the one-half (1/2) rate shall be divided equally. The foregoing royalties are payable to Employee only for the musical material originally prepared by Employee hereunder, and not for arrangements, orchestrations, translations or other adaptations or modifications of the musical material created by others.

c. No royalties are to be paid for professional copies, copies disposed of as new issues, copies distributed for advertising purposes, or lyrics or music separately printed in any folio, book, newspaper, song sheet, lyric folio or magazine, or any other periodical except as set forth herein. No royalties are payable on consigned copies unless paid for and an accounting made thereof.

d. Royalties based on remittances from sources outside the United States shall not be computed until they have been received in the United States in United States dollars. Conversion into United States dollars shall be at the average weighted rate of exchange at

which remittances have been received by Publisher during the accounting period in which such remittances are received. All remittances from foreign sources shall be less any and all applicable foreign taxes and less costs of conversion and remittance.

c. Royalty statements shall be rendered and royalties paid within sixty (60) days of such semi-annual dates as Publisher may determine. All royalties, statements and other accounts rendered by Publisher shall be deemed correct and binding upon Employee unless an objection is made in writing, specifying in detail the items to which Employee objects and the nature and reasons for Employee's objections and delivered to Publisher within one (1) year from the date of the objectionable statement or account, and after such notice of objection, unless suit is instituted within one (1) year after the date Publisher notifies Employee that Publisher denies the validity of the objection. The inclusion of items in a statement or account which appeared in a previous statement or account shall not render any such item contestable or recommence the running of the period for contesting any such item. No royalty statements shall be required for periods in which no royalties are due.

f. The obligation to pay monies hereunder shall not bear interest nor shall Employee acquire any right, title or interest in any increments or gains that may accrue to funds payable to Employee.

g. Employee shall look solely to Publisher for all of the foregoing royalties. Any failure of Publisher to pay the foregoing royalties shall not constitute a breach by Producer of this Agreement nor shall Producer be liable or responsible for the payment of such royalties. Producer shall have no obligation to cause any of the uses referred to in this Paragraph to be made.

7. PAYMENT AUTHORIZATION: All payments to Employee hereunder may be made by check to Employee's order and mailed to Employee at the address set forth in Paragraph 3.

8. EXCLUSIVITY: During the Term, Producer shall have the exclusive right to Employee's services, and Employee shall not render any services of any kind for any person (including Employee) other than Producer.

9. LOCATION:

a. Employee's services shall be rendered at such place(s), in the United States or elsewhere, as Producer may designate from time to time. When Employee is required to render any such services on location, Producer shall furnish such reasonable meals and transportation as may be required for Employee because of such services. Where Producer requires Employee to remain on such location overnight, Producer shall furnish necessary and reasonable lodging for Employee.

b. Employee shall be deemed not to be on location when at or near the studio then generally used by Producer as the base for the production of its photoplays.

c. Any meals, transportation or lodging furnished under this paragraph 9 shall be first class, if available and if used.

10. UNION MEMBERSHIP: At Employee's expense, Employee shall be a member in good standing of any union with which Producer may have an agreement requiring such membership during the Term or for such periods as Producer may lawfully require such membership, and for individuals performing services of the type and character required of Employee hereunder.

11. CREDIT: If Employee fully complies with the terms hereof and the Photoplay is released containing the results and proceeds of Employee's services hereunder, Producer shall accord Employee credit on the positive prints of said photoplay in accordance with the applicable provisions of Producer's then current standard form. Nothing herein contained shall require Producer to accord Employee credit in trailers or other advertising. Any inadvertent failure by Producer to comply with the provisions of this paragraph or failure due to the acts or omissions of third parties shall not constitute a breach of this agreement. If Producer uses any of the results and proceeds of Employee's services in other photoplays, Producer shall not be obligated to accord any credit to Employee.

12. SUSPENSION:

a. Producer shall have the right (without prejudice to Producer's termination rights or other rights hereunder, or at law or in equity, or otherwise) to suspend the running of time hereunder, in the event of the occurrence of any contingency described in paragraph 12.a. (i) (herein called a "disability"), or any contingency described in paragraph 12.a. (ii) (herein called a "force majeure"), or any contingency described in paragraph 12.a. (iii) (herein called a "default"). Such contingencies are:

(i) Disability: Mental, physical or other disability interfering with Employee's ability to perform hereunder or Employee's inability to perform any of Employee's obligations hereunder for any other cause rendering such non-performance excusable at law. In the event of the occurrence of any disability, between the date hereof and the end of the Term, Employee shall notify Producer thereof, in writing, within one business day after the respective occurrence.

(ii) Force Majeure: The hampering, interruption of or interference with the preparation, production, commencement or completion of Producer's photoplays, or of the Photoplay, by reason of one or more contingencies beyond Producer's control, such as epidemic, fire, explosion, casualty, accident, action of the elements, act of God or public enemy, labor conditions or dispute, walkout, strike, lockout, civil disturbance, riot, insurrection, war (declared or undeclared) or armed conflict, the enactment, issuance or enforcement of any law, ordinance or executive, judicial, administrative or other governmental order, decree, regulation, judgment or arbitration award, or the shortage of, delays in or inability to obtain materials, labor, equipment, transportation, power or any other necessary commodity or service, or by reason of the death or disability of any principal member of the cast or of the director of the Photoplay.

(iii) Default: Employee's failure, refusal or neglect, other than by reason of disability, to perform any of Employee's obligations hereunder; or a statement by Employee or Employee's representative that Employee will so fail, refuse or neglect; or Employee's failure to notify Producer by telegraph of Employee's confirmation that Employee will fully perform hereunder, within 24 hours after Producer notifies Employee by telegraph that Producer requests such confirmation.

b. Producer's election to suspend hereunder may be exercised only by written notice served not later than one (1) week after the date as of which the suspension is started. Each suspension shall continue until ended by Producer by written notice. However, a suspension may only continue until the end of the contingency, plus such additional period as Producer may reasonably require to arrange to use Employee's services after the suspension. A disability or default shall be deemed to have ended when Employee reports to Producer, unconditionally ready, willing and able to render services hereunder, or otherwise cures any default, and gives Producer written notice thereof.

c. Producer may postpone the start of the Term by a period equal to all or any part of any period of any such contingency which occurs on or after the date hereof and before the Term starts.

d. In the event of any suspension during the Term, the period of such suspension, unless Producer notifies Employee in writing to the contrary during the suspension or within one week thereafter, shall be deemed excluded in computing the length of the Term, so that all times for making payments, and for exercising any rights hereunder, shall be correspondingly postponed.

e. The accrual of compensation hereunder shall be suspended during the period(s) of any such suspension(s), and the number of weeks of guaranteed compensation shall be reduced by a period equivalent to the period or aggregate of periods of any such suspension(s).

f. During a suspension, Employee shall render services on days Producer requests Employee to do so. Any such days, on which Employee at Producer's request renders such services for which Employee is entitled to compensation hereunder, shall be excluded from the period of the suspension (without prejudice to Producer's right to continue the suspension), and Employee shall be paid for such days.

MUSIC EMPLOY AGMNT
LAW 110

*provisions of the rider on credits attached hereto and made a part hereof.

FORM 3014

13. TERMINATION:

a. Producer may terminate Employee's employment hereunder if any default occurs, or if one or more disabilities occur for a period or aggregate of periods of one (1) week, or if one or more force majeures occur for a period of eight (8) consecutive weeks.

b. Producer may exercise such termination rights, by written notice to Employee at any time during the respective contingency or any suspension based thereon, or thereafter within one (1) week after the end of such contingency or suspension, if any, (whichever ends later). Producer's election to suspend under paragraph 12 shall not affect Producer's termination rights under this paragraph 13.

c. Employee shall have the same right of termination during any force majeure suspension which has continued for a period of eight (8) consecutive weeks, if Employee is then unconditionally ready, willing and able to resume Employee's services hereunder; however, Producer may avoid Employee's termination by ending the suspension by written notice within one (1) week after receipt of Employee's notice of termination, in which event Producer may not thereafter suspend again by reason of the continuance of the same contingency.

d. Termination of Employee's employment, under this paragraph 13 or any other provision, (i) shall terminate Producer's obligation to pay Employee any further compensation except that Producer shall pay Employee for services previously rendered if the termination is not for default; (ii) shall not constitute a waiver by Producer of any other rights Producer may have at law or in equity; and (iii) shall not affect Producer's rights, or any agreement or warranty of Employee, with respect to the results and proceeds of Employee's services previously rendered, or with respect to Employee's name and likeness.

14. RESULTS AND PROCEEDS:

a. As Employee's employer for hire, Producer shall own in perpetuity, throughout the universe, solely and exclusively, for use in whole or in part, all rights of every kind and character, in the musical material and all other results and proceeds of the services rendered by Employee hereunder and Producer shall be deemed the author thereof for all purposes. Producer shall have the right to obtain copyright and renewals of copyright in the musical material in the name of Producer or in Producer's nominee in all countries and to exercise all rights and remedies thereunder. Employee shall execute and deliver any instrument(s) which Producer may deem necessary to effectuate the intent of this agreement. If Employee fails promptly to deliver such instrument(s) Producer may do so in Employee's name as Employee's attorney-in-fact, and Employee irrevocably appoints Producer so to act.

b. Without limiting Paragraph 14.a., Producer may, in its sole discretion, (i) use the musical material in the Photoplay or in any other photoplay or for any other use, (ii) use music, lyrics, musical scores and or musical compositions written and prepared by other persons alone or in combination with the musical material, (iii) assign persons other than Employee to write and or collaborate in the writing of the music, lyrics, musical score and or musical compositions to be delivered to Producer in connection with said photoplay, (iv) adapt, arrange, revise and transpose all or any of the musical material.

c. Producer shall have the exclusive right (but not the obligation) to publish, (in which case the Producer selects the Publisher designated in Paragraph 1.d.) use, license or otherwise dispose of, and to permit other persons to do so, the musical material upon such terms and conditions as Producer in its sole discretion may determine. Producer shall have the right to adjust and settle all disputes with Publisher, licensees, and all other persons including the right to make allowances and give credit to adjust claims therefor.

d. Employee agrees that Producer, its licensees, and other persons authorized to distribute, exhibit and or exploit theatrically, non-theatrically, by the medium of television or in any other manner any photoplay in connection with which the musical material is used, shall have the free and unrestricted right in perpetuity to record, synchronize, use, perform and or exploit throughout the universe in any manner, without limit of media or frequency, the musical material, either separate from or together with any photoplay, without the payment of any charge or royalty whatsoever. Employee shall not participate in any rentals or sums of money or royalties received by Producer, its licensees or such other persons from such recordation, synchronization, use, performance, and/or exploitation of the musical material.

e. Producer shall have the right to use and to permit others to use Employee's name and likeness in any media for advertising, and/or publicity purposes perpetually in connection with Employee's services and the exploitation of the results and proceeds of Employee's services, provided such use is not in the nature of an endorsement or testimonial.

15. PERFORMING RIGHTS: Employee is a writer member of said Performing Rights Organization and subject to Paragraph 14., nothing herein contained shall derogate from the right conveyed to said Performing Rights Organization by reason of Employee's membership therein to license the public performance of the musical material.

16. LEGAL AND EQUITABLE RELIEF: Employee and Producer agree that Employee's services are of a special, unique, unusual, extraordinary and intellectual character, which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, and Producer, in the event of any breach of this agreement by Employee, shall be entitled to equitable relief, by way of injunction or otherwise.

17. COLLECTIVE BARGAINING AGREEMENTS: To the extent that Employee's employment hereunder is covered thereby, this agreement is subject to the provisions of [redacted] and the now current Producer-American Federation of Musicians of the United States and Canada agreements and the respective provisions thereof are incorporated herein to the extent applicable. Wherever there is any conflict between any provision hereof and any law or requirement with the force of law or an applicable union agreement, such provision hereof shall be restricted to the extent, and only to the extent, necessary to bring it within the applicable requirements. Any invalid provision(s) hereof shall be severed, and of no force or effect, and the remaining provisions shall continue in full force and effect, as if the invalid provisions(s) had never been contained herein.

18. MORALS: Employee's conduct shall be with due regard to public conventions and morals, and Employee has not done and shall not do or commit any act or thing that will degrade Employee in society or bring Employee into public hatred, contempt, scorn or ridicule, or that will shock, insult or offend the community or ridicule public morals or decency, or prejudice Producer or the motion picture, theatrical, television, radio or entertainment industry in general.

19. WARRANTIES; INDEMNITY: Employee warrants that the musical material shall be wholly original with Employee except as to material within the public domain and shall not infringe upon the copyright, any common law rights, or any right of any person. Employee warrants that Employee has not and will not do or cause or permit to be done any act which will interfere with the full performance by Employee of Employee's obligations hereunder or which will prevent or interfere with Producer's exercise of the rights herein granted Producer. Employee shall hold Producer, Related producer, Related publisher and their licensees and assigns and their respective officers, agents and employees harmless from all damages, recoveries, judgments, penalties, costs and legal fees which may be obtained against, imposed upon, or suffered by reason of the breach of Employee's warranties or the use of the musical material. The foregoing shall not apply to changes in the musical material made by Producer.

20. ASSIGNMENT: Producer may assign this agreement or any of Producer's rights hereunder to any person (including any person to which Producer is related, by stock ownership or otherwise, and any joint venture to which Producer is a party), and this agreement shall inure to the benefit of Producer and its successors and assigns.

21. GOVERNING LAW: All matters pertaining to this agreement (including its interpretation, application, validity, performance and breach), in whatever jurisdiction action may be brought, shall be governed by the laws of California applicable to contracts made and to be wholly performed in California. If any compensation payable

hereunder shall exceed the amount permitted by any present or future law or requirement with the force of law, such stated compensation shall be reduced while such limitation is in effect to the amount which is so permitted, and payment of such reduced compensation shall be deemed to constitute full performance by Producer of its obligations hereunder with respect thereto.

22. DEDUCTIONS: Producer and/or Publisher may deduct and withhold from any monies payable to Employee, such amounts as Producer and/or Publisher may be legally required to deduct and withhold. Producer and/or Publisher may offset against any monies, including royalties, payable to Employee hereunder the amount of any liability of Employee to Producer and/or Publisher.

shall not be deemed an election by Producer to terminate Employee's employment, and shall not constitute or result in such termination. Producer's or Employee's failure to enforce any provision hereof on any occasion shall not be deemed to be a waiver of any preceding or succeeding breach of such provision or any other provision hereof.

26. MOTION PICTURE RELIEF FUND: Employee authorizes Producer to deduct from each payment of compensation hereunder an amount equal to one percent (1%) of the gross amount thereof, and to pay the amount so deducted to Motion Picture Relief Fund of America, Inc. This authorization shall remain in effect until written notice of its revocation is received by Producer.

27. MISCELLANEOUS:

hereunder shall exceed the amount permitted by any present or future law or requirement with the force of law, such stated compensation shall be reduced while such limitation is in effect to the amount which is so permitted, and payment of such reduced compensation shall be deemed to constitute full performance by Producer of its obligations hereunder with respect thereto.

22. DEDUCTIONS: Producer and/or Publisher may deduct and withhold from any monies payable to Employee, such amounts as Producer and/or Publisher may be legally required to deduct and withhold. Producer and/or Publisher may offset against any monies, including royalties, payable to Employee hereunder the amount of any liability of Employee to Producer and/or Publisher.

23. CLAIMS: If any claim is made against Producer, Related producer, Publisher, or Related publisher with respect to the musical material, any monies, including royalties, payable to Employee shall be withheld. Employee shall be given written notice of such withholding. Upon a final determination as to such claim by an appropriate person or body (such as a court or arbitrator) Producer shall pay Employee that portion, if any, of such withholding to which it has been determined that Employee is entitled.

24. JOINT AND SEVERAL: If this agreement be executed by two or more persons as "Employee", then this agreement shall be binding jointly and severally upon said persons and each of them, and the term "Employee" shall be deemed to include and apply to all persons who are described as "Employee" and all sums to be paid to Employee hereunder shall be paid by separate checks payable in equal amounts to each such person.

25. RIGHTS AND REMEDIES: All rights and remedies which Producer may have hereunder or by operation of law are cumulative and the pursuit or waiver of one right or remedy shall not be deemed an election to waive or renounce any other right or remedy. Without limiting the foregoing, at any time or from time to time, and without waiving any other right or remedy Producer may have, Producer may prosecute an action or actions at law for all or any part of the damages from any default; the institution or prosecution of any such action(s) shall not be deemed an election by Producer to terminate Employee's employment, and shall not constitute or result in such termination. Producer's or Employee's failure to enforce any provision hereof on any occasion shall not be deemed to be a waiver of any preceding or succeeding breach of such provision or any other provision hereof.

26. MOTION PICTURE RELIEF FUND: Employee authorizes Producer to deduct from each payment of compensation hereunder an amount equal to one percent (1%) of the gross amount thereof, and to pay the amount so deducted to Motion Picture Relief Fund of America, Inc. This authorization shall remain in effect until written notice of its revocation is received by Producer.

27. MISCELLANEOUS:

a. Any amounts paid to Employee, which Producer was not obligated to pay hereunder, shall be refunded to Producer upon demand or may be deducted by Producer from any monies, including royalties, payable to Employee hereunder or under prior or subsequent agreements between Employee and Producer.

b. If Producer, Related producer, Publisher or Related publisher breaches this agreement or fails to abide by the provisions hereof, Employee's relief shall be the recovery of money damages and the rights granted by Employee hereunder shall not terminate by reason of such breach.

c. Employee warrants that Employee has no commitments which might interfere with Employee's ability to comply fully with this agreement.

d. The headings of the paragraphs and subparagraphs hereof are for convenience only, and they shall not be of any effect in construing the contents of the respective paragraphs or subparagraphs.

e. This agreement includes the entire understanding of the parties with respect to the subject matter hereof, and all prior and concurrent oral agreements, and all prior written agreements with respect to such subject matter have been merged herein. No representations or warranties have been made other than those expressly provided for herein. This agreement may not be modified, except by a written instrument signed by the parties.

**

IN WITNESS WHEREOF, the parties have executed this agreement by signing below.

LALO SCHIFRIN (Employee)

UNIVERSAL PICTURES
a division of Universal City Studios, Inc. (Producer)

By

**This Agreement shall be subject to the provisions of Exhibit "A" attached hereto and made a part hereof. If there is a conflict between any provision of this Agreement and any provision of said Exhibit "A", the provision of said Exhibit "A" shall control.

RIDER TO MUSIC EMPLOYMENT AGREEMENT BETWEEN UNIVERSAL PICTURES

, A DIVISION OF UNIVERSAL CITY STUDIOS, INC.

("PRODUCER") AND LALO SCHIFRIN ("EMPLOYEE")

DATED JANUARY 9, 19 73.

Credit shall be accorded to Employee on the positive prints of the Photoplay by the phrase "MUSIC BY", or a phrase substantially similar thereto, followed by Employee's name on not less than the top half of the same card as that which displays the name of the person accorded credit by the phrase "MUSIC SUPERVISION BY", or a phrase substantially similar thereto. This rider is subject to the terms and conditions contained in Paragraph 11 of this agreement.

Employee shall be given credit in paid advertising issued by Producer whenever, in Producer's sole judgment, it is practical to do so.

RIDER TO MUSIC EMPLOYMENT AGREEMENT BETWEEN UNIVERSAL PICTURES

, A DIVISION OF UNIVERSAL CITY STUDIOS, INC.

("PRODUCER") AND LALO SCHIFRIN ("EMPLOYEE")

DATED JANUARY 9, 1973.

Producer shall have the right in perpetuity to use, license and exploit Employee's name and likeness and any of the results and proceeds of Employee's services hereunder in and in connection with any commercial record, whether in disc, cartridge, tape, magnetic, electronic or other form, made from the sound track of said photoplay. Producer shall pay or cause to be paid to Employee a royalty which shall be a percentage of the net retail selling price on ninety per cent (90%) of all such records sold, as such price, such number of records and applicable percentage are classified, computed and accounted for in accordance with the usual and standard practice of the recording company concerned. Such record company may recoup from such royalties its usual and standard recording costs. Such applicable percentage shall be (i) on sales in the United States other than through record clubs, 5 % for records other than tapes, and 2½ % for tapes; (ii) on sales outside the United States or through record clubs anywhere, 2½ % for records other than tapes, and 1½ % for tapes. To the extent that such record company computes royalties on distributor's cost rather than net retail selling price, royalties shall be computed on distributor's costs, and the respective percentages shall be doubled. No royalty is payable on records (including tapes) distributed as premium records or as record club bonuses or dividends. Employee shall not perform any material which Employee performed in said photoplay for any person other than Producer in or for any commercial records for a period of five (5) years after the first release of such material by Producer in commercial records or the first release of said photoplay, whichever occurs first. Employee represents and warrants that Employee is not a party to any agreement which will preclude Producer from exercising and enjoying the rights granted to Producer hereunder.

EXHIBIT "A"

This exhibit is attached to and is part of Employment Agreement dated _____ between Universal Television, a division of Universal City Studios, Inc. (referred to herein as "producer") and _____ _____ (referred to herein as "composer").

ARTICLE 1 Credits for Screen Composition

(a) Screen Credit for composition is to be given for the initial use of the composed music or lyrics, but only in the motion picture for which it was specifically composed and used, and only to those who actually composed such music and/or lyrics so used, as follows:

Underscoring

Each composer whose music composed for the picture constitutes more than one-third (1/3) of the total underscoring contained in the final motion picture, which contribution shall be determined in minutes, shall be given screen credit. However, in no event shall Producer be required to give more than two such composers such credit. If one-third (1/3) or more of the total underscoring used in the motion picture is by one composer, he is to receive credit even if the music was previously used, unless such composer does not desire a credit, or it would be a burden on producer to make such a determination. In any event, credit for any such re-used music need be given by producer to only one composer. Producer, however, may give credit for composition underscoring to a composer whose music is less than one-third (1/3) of the total underscoring contained in the motion picture.

The form of underscoring screen credit shall be:

Where the composer composed all of the music, or where the composer composed all of the music except that for which credit is specifically given to others, the form of underscoring screen credit shall be "Music by" or "Music Score by" or "Music Composed by" or "Music Score Composed by" or words of similar nature. Where the composer has composed a theme for a television film without lyrics, the screen credit shall be "Theme by". In all other cases where the composer composed less than all of the music and credit is not given to others, the form of credit shall be "Music Scored by" or such other credit as may be agreed upon between the composer and producer.

The form of screen credit for songs shall be:

"New Songs by", or "Song by", or "Songs by"; or "Original Songs by"; or "Music & Lyrics by", or "Words and Music by"; or "Words by and Music by"; or "Lyrics by and Music by", "Theme by" (for television films), or words of a similar nature, and in addition such other credits as may be agreed upon by the composer and producer.

(b) The producer shall not be limited as to the size or placement of the credit.

(c) With respect to material purchased or otherwise licensed, producer shall have the unlimited right, as it may see fit, to give or not give screen credit for the composition of music or lyrics in any manner.

(d) If a composer, at the time of his employment or at any time thereafter, states in writing that he is not and never was a member of the Communist Party, and such representation is shown to have been false, or if a composer at any time refuses on request of producer to make a statement as to whether he is or ever was a member of the Communist Party, or if a composer upon such request states in writing that he is a member of the Communist Party, or if a composer before the House Un-American Activities Committee or any similar duly constituted Congressional or State Legislative or executive committee, has refused to testify as to whether he is or was a member of the Communist Party, or if a composer having been subpoenaed to appear before such a committee fails or refuses to appear in response to such subpoena, the producer shall be relieved of any obligations to accord credit to the composer under his employment agreement.

The producer, however, shall not be relieved of its obligation to give such credit by reason of any act or failure to act, on the part of the composer, described in the preceding sentence, if prior to the composer's employment by the producer (i) such act or failure to act by such composer had occurred and (ii) such occurrence was known to the producer.

ARTICLE 2 Rights Arising From Composition

(a) As used in this Article 2, the following terms shall have the following meanings:

"Composition" means any and all music and lyrics written, composed, submitted, added, improvised, interpolated or invented by the composer in the course of his employment by the producer.

"Society" means any performing rights society, or other collection agency or organization, which, either directly or through affiliates, maintains a regular system of collecting fees from the users of compositions for the privilege of performing the same in public for profit, for the benefit of both composer-members and publisher-members, and which divides its aggregate net collections of such fees equally between its publisher-members and composer-members, or which has agreed in writing to divide its net collections with respect to performances of the compositions involved equally between the composer and the publisher, hereinafter referred to.

"Performing Rights" means those public performing rights which are, from time to time, as a practical matter, administered and controlled by the Society involved.

(b) The producer, as employer for hire of the composer, is entitled to and shall own all rights of every kind and character, without any restriction, limitation or reservation whatsoever, in and to the compositions, and the copyrights therein, and any and all renewals and extensions of such copyrights everywhere in the world, specifically including the copyrights and all renewals and extensions thereof in the United States. Without limiting the

EXHIBIT C - AGREEMENT DATED JANUARY 9, 1973 -
ANNEXED TO AFFIDAVIT OF HARRY GARFIELD

generality of the foregoing, it is specifically understood and agreed that included in the ownership of all rights of the producer in and to the compositions is the exclusive and irrevocable right under any and all circumstances, in perpetuity, to perform publicly for profit, or otherwise, and to authorize others so to do (by any and all present and future methods and means of public performance, whether or not now known or contemplated) the compositions, or any part or parts thereof, throughout the world. Such rights include, but are not limited to, the Performing Rights, as hereinabove defined.

(c) In order to assure the composer of participation in the revenue which may be derived from performances of the compositions, producer agrees that in the event the composer is, on the date of his employment by producer, a member or licensor of a Society, producer will, and it does hereby, transfer and assign the world-wide Performing Rights (as hereinabove defined) in and to the compositions to the composer and a publisher of producer's choice, which publisher may, but need not, be a subsidiary or affiliate of producer, but which publisher shall be a member or licensor of the same Society, or of an affiliate of the same Society, as the composer. Notwithstanding anything herein contained, however, there is hereby excepted and reserved from said transfer and assignment the non-exclusive right to perform the compositions in any and all situations, throughout the world, where it is, or may from time to time be, unlawful for the Society, or any of its affiliated bodies to collect performance fees, or where the Society, or any of its affiliated bodies, does not, from time to time, for any reason whatsoever, actually maintain a regular system of collecting performance fees. In any and all such situations, the producer may authorize the performance of the compositions in and as a part of the motion picture in which they are included and trailers thereof, or otherwise, without payment of any performance fees whatsoever to the composer, or to the Society, or to the publisher or anyone else.

(d) The producer has agreed to and does hereby transfer and assign the Performing Rights, as set forth in paragraph (c) above, only conditioned upon and subject to the following:

(1) That the motion pictures (including trailers) and copies thereof containing the compositions may be exhibited at any place in respect of which there is subsisting a valid license granted by the Society or by one of its affiliated bodies (as the case may be).

(2) That no such license shall be required for performing the compositions:

(i) for the purpose of reproducing the same in synchronism or timed relation with the motion pictures and copies thereof during the production thereof;

(ii) in any of the situations referred to in paragraph (c) hereof with respect to which producer reserves the non-exclusive right to perform the compositions.

(3) That if the proprietor or licensee of any place capable of being licensed by the Society or one of its affiliated bodies fails or neglects to hold a license, as aforesaid, the right of the Society, or of the affiliated body concerned, shall be against such person exclusively.

(4) That, under no circumstances, shall the Society, or any of its affiliated bodies, or the composer or any successor in interest of the composer, or the publisher have the right to take any proceedings in respect of any unlicensed performance that would have the effect of enjoining and/or preventing and/or otherwise interfering with the public performance anywhere in the world and by any means or method now or hereafter known of the motion pictures or any portion thereof or any trailer thereof with the compositions included therein, nor shall the producer or the publisher be liable to the composer for any action that the Society or any of its affiliated bodies may or may not take in administering the Performing Rights or for any payments that the Society may or may not make to the composer.

(5) That the compositions need not be published as a condition of the payment of the publisher's share of performance fees.

(6) That neither the producer nor the distributor nor the publisher shall, under any circumstances, be liable to the composer or his successors in interest, or to the Society or its affiliated bodies, nor shall the producer or the distributor be liable to the publisher, for any payment of any sums by reason of performance of the compositions as contained in the motion pictures, or otherwise.

(7) That under no circumstances shall the composer or his heirs, executors, administrators or other personal representatives, agents or assigns have the independent right to license performances of the compositions as included in the motion pictures or trailers thereof, or to otherwise interfere in any way with the distribution and exhibition of such motion pictures containing the compositions.

(8) That if, after the transfer and assignment referred to in paragraph (c) hereof, the composer should resign from or cease to be a member or licensor of the Society, the Performing Rights in and to the compositions involved shall, nevertheless, continue to be controlled and administered by the Society so long as the publisher remains a member of said Society, that if, after said transfer and assignment, the publisher should resign from, or cease to be a member or licensor of the Society or an affiliate of the Society, the Performing Rights in and to the compositions involved shall, nevertheless, continue to be controlled and administered by the Society so long as the composer remains a member of said Society; and that if, after said transfer and assignment, both the composer and the publisher shall no longer be members or licensors of the Society or the Society should cease to exist or function, then the Performing Rights in and to the compositions involved shall revert to the producer.

Notwithstanding the transfer and assignment referred to in paragraph (c) hereof, it is agreed that the publisher shall always have the right to transfer the Performing Rights acquired by it pursuant thereto to another publisher which is a member of the same Society, and the producer shall always have the right to cause the Performing Rights to be transferred to another publisher which is a member of the same Society.

(9) That for the purpose of protecting the motion picture in which any composition is used or to be used, the producer or the publisher shall always have the right to impose restrictions upon the performance of such composition apart from such motion picture.

ARTICLE 3 . Location Expenses

If composer is required by the producer to perform services on any location sufficiently far away from the producer's studio so that overnight accommodations are reasonably necessary, the producer shall furnish and pay for the reasonable board and lodging of the composer while required to remain on any such location, and agrees to furnish for the composer first-class transportation, if available, to and from any such location, it being understood that such first-class transportation need not include a drawing room or compartment or passage on any so-called "extra fare" train, and the producer may in any contract of employment between the producer and a composer designate a reasonable daily maximum liability on the part of the producer for such board and lodging of the composer.

In addition, producer shall furnish at such location a musical instrument and such mechanical reproducing and playback instruments as may be necessary or required in connection with his composition.

ARTICLE 4 **Flight Insurance**

Producer will provide a minimum coverage of $20,000 flight insurance for each composer who travels by airplane, at the direction of the producer, during his employment. Composer shall be permitted to fill out a form specifying a beneficiary. Such form shall be filed with the designated representative of the producer.

ARTICLE 5 **Minimum Compensation**

(a) Definition of a qualified composer and song writer:

(1) A qualified composer of underscoring is a composer who has screen credit for one feature length picture, three one-half (1/2) hour or one one-hour (1) or more in length television motion picture, or 52 weeks of employment in the motion picture industry, as a composer of underscoring.

(2) A qualified song composer is a composer who has two published songs or who composed two separate songs each of which is completely contained in a motion picture produced and released in the American motion picture industry or who has had 52 weeks of employment in the American motion picture industry as a composer of either or both song music or song lyrics.

(b) Wage Scale Minimum Compensation:

(1) There are no minimum compensation requirements with respect to unqualified composers.

(2) The minimum compensation per week for a qualified composer for composition only, shall be:

	Television Motion Pictures	Theatrical Motion Pictures
Term Contract:	$357.50	$393.25
Week to week:	$385.00	$423.50

The above salary shall commence and apply when an assignment is made under the producer's direction and control. The above television weekly rate shall apply in term or week-to-week employment in any week in which no work hereunder is performed in a theatrical motion picture; in any week in which such work is performed in both theatrical and television motion pictures the theatrical motion picture rate will apply for that week. For these purposes, a term contract is a personal service contract for a term of at least ten out of thirteen weeks or any like ratio for a longer period. A week-to-week contract is a personal service contract for a term of less than ten out of thirteen weeks. A composer employed on a weekly basis, may be terminated at any time after one week.

If any composer under a week-to-week or term contract shall render services after the expiration of the period for which his specified compensation is provided in the employment contract and no additional amount is specified for such additional period, then in such event the composer shall receive the weekly rate specified in such contract for each week, or, for purpose only of prorating days worked in a partial workweek (of less than six (6) days), one-fifth (1/5) for each such a day worked during which the composer shall render such additional services. In any week of employment when the producer may under this agreement employ the composer for less than one full week (i.e. after one week or after the term of the agreement), if the composer shall render services in composition and also other services not covered by this agreement his minimum compensation for composition shall be prorated in proportion to the amount of time required by producer for composition.

(3) In the alternative, when the employment for composition, excluding songs, is for television films only, and it is non-exclusive employment, the minimum compensation shall be:

a) Not less than $192.50 for a half-hour show.
b) Not less than $385 for a one-hour show.
c) Not less than $550 for a one and one-half hour show.
d) Five minutes or less of new music, not less than $100.

The above rates of $192.50 for a half-hour show, $385 for an hour show, and $550 for a one and one-half hour show shall be applicable where more than five minutes of new music is composed for a program.

Where more than five minutes of new music is composed and more than one composer is employed, the combined payments to such composers shall be not less than $200 for a half-hour show or $385 for an hour show. In no event shall a composer who composes five minutes or less of new music, under such circumstances, be paid less than $100 if he composed "a five minute or less fragment."

(4) The minimum compensation for employment for the composition of songs shall be governed by the theatrical rate provisions of (b) (2) of this article only.

(5) Any amounts paid to the composer in excess of the minimum compensation, as provided above, may be applied to any other payments (except royalties provided for by Article 6), required under this agreement.

(6) Theatrical Exhibition of Television Films:

In the event a television motion picture or pictures containing music composed on or after the effective date of this agreement, under the provisions of Article 5(b)(3) above, is exhibited theatrically (as one or in combination) producer shall pay to the composer or composers of such music, so used, in such exhibition, the following applicable single amount for an unlimited number of such exhibitions.

The amount, if any, that (i) $385 exceeds the compensation paid such composer or composers for a half hour show so used; or (ii) $770 exceeds the compensation paid such composer or composers employed for a one-hour show so used; or (iii) $1,100 exceeds the compensation paid such composer or composers employed for a one and one-half hour show so used; or (iv) $40 exceeds the compensation paid such composer or composers employed for each minute of a five minute or less fragment so used.

If the producer shall sell, assign, transfer or otherwise dispose of its theatrical exhibition rights in any such television film or shall license the distribution rights to such theatrical exhibition, producer shall be responsible, or shall require its purchaser or licensee to become responsible for compliance with this provision relating to the initial theatrical exhibition of the film. Upon obtaining such agreement from such purchaser or licensee, producer shall be relieved of further obligation hereunder, provided producer sends to the Guild, within 30 days thereafter, a copy of such assumption agreement.

(7) Unused Music:

With respect to theme music or songs intended to be used in a television pilot film, if such pilot is not made within three (3) years after the composition of the theme music or song is completed, the composer of such theme music or song will have a twelve-month option period, commencing with the end of such three-year period, within which to purchase back all rights in such theme music or song, at the producer's cost. If the composer does not exercise such option in such option period, such option shall thereupon be terminated. If producer uses such theme music or song in a pilot or otherwise exploits the theme music or song before the composer has completely exercised his option in such option period, the composer's right to such option shall thereupon terminate. If the composer so exercises such option, within such option period, producer nevertheless shall have the non-exclusive right to use such theme music or song in the particular pilot for which the theme music or song was composed, or in any series based on such pilot.

With respect to songs, if the song intended to be used in a motion picture, other than television pilot films, is not used or otherwise exploited, within five (5) years after the composition of the song is completed, the composer will have a thirty-six month option period commencing with the end of such a five-year period within which to purchase back all rights in such song, at the producer's cost. If the composer does not exercise such option in such option period such option shall thereupon be terminated. If producer uses such song in a motion picture, or otherwise exploits it, before the composer completely exercised his option in such option period the composer's right to such option shall thereupon terminate. If the composer so exercises such option, within such option period, producer nevertheless shall have the non-exclusive right to use such song in motion pictures.

Costs shall be deemed to be the amount producer paid to the composer for such musical composition, plus fringe benefits and taxes. The composer shall receive back only the music as written in the manuscript delivered to the producer.

ARTICLE 6 Publication Royalties

Should the producer, or any subsidiary or affiliated company, or any assignee or licensee of producer, exploit the music or musical composition (hereinafter referred to as the "composition") then the producer, or such subsidiary or affiliated company, or such assignee or licensee, shall pay directly to the composer an amount of royalty with respect to such composition not less than the following, and producer's contract with such subsidiary or affiliated company, or assignee or licensee, shall so require and if producer's contract does so provide then producer shall not be responsible for payment of the royalties hereunder:

(a) Five cents (5 cents) per copy in respect of regular piano copies sold and paid for in the United States and Canada.

(b) Fifty percent (50%) of all net sums received by the publisher in respect of regular piano copies, orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and/or instruments, and/or other copies of the composition sold in any country other than the United States and Canada; provided, however, that if the publisher should sell such copies through, or cause them to be sold by, a subsidiary or affiliate or any assignee or licensee which is actually doing business in a foreign country, then in respect of such sales, the publisher shall pay to the composer not less than ten percent (10%) of the wholesale selling price in respect of each such copy sold and paid for.

(c) Ten percent (10%) of the wholesale selling price (after trade discounts if any) of each copy sold and paid for in the United States and Canada, or for export from the United States, of orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and/or instruments, and/or other copies of the composition (other than regular piano copies).

(d) (i) If the composition, or any part thereof, is included in any song book, song sheet, folio or similar publication issued by the publisher containing at least four (4), but not more than twenty-five (25) musical compositions, the royalty to be paid by the publisher to the composer shall be an amount determined by dividing ten percent (10%) of the wholesale selling price (after trade discounts, if any) of the copies sold, among the total number of copyrighted musical compositions included in such publication. If such publication contains more than twenty-five (25) musical compositions, said ten percent (10%) shall be increased by an additional one-half percent (1/2%) for each additional musical composition.

(ii) If, pursuant to a license granted by the publisher to a licensee not controlled by or affiliated with it, the composition, or any part thereof, is included in any song book, song sheet, folio or similar publication, containing at least four (4) musical compositions, the royalty to be paid by the publisher to the composer shall be that proportion of fifty percent (50%) of the gross amount received by it from the licensee, as the number of uses of the composition under the license and during the license period, bears to the total number of uses of the publisher's copyrighted musical compositions under the license and during the license period. Such royalties shall be computed and paid within thirty (30) days after the expiration of the term of each license, but if any such license term is in excess of one year, such royalties shall be computed and paid annually.

(iii) In computing the number of the publisher's copyrighted musical compositions under subdivision (ii) hereof, there shall be excluded musical compositions in the public domain and arrangements of musical compositions in the public domain if no royalties are payable with respect to such arrangements by the publisher.

(iv) Royalties on publications containing less than four (4) musical compositions shall be payable at regular piano copy rates.

(e) As to "professional material" not sold or resold, no royalty shall be payable.

(f) Fifty percent (50%) of all net sums actually received by the publisher in respect of any licenses (including statutory royalties) authorizing the manufacture of parts of instruments serving to mechanically reproduce the composition; or to use the composition in synchronization with sound motion pictures produced by anyone other than: (i) the producer, its subsidiary, and affiliated companies; (ii) any company using the composition in a motion picture financed substantially by or to be distributed by the producer; and (iii) the producer for whom the composition was originally composed, and its subsidiary and affiliated companies; or to reproduce it upon electrical transcription for broadcasting purposes; except that the composer(s) shall not be entitled to any share of the monies distributed to the publisher by any performing rights society anywhere in the world, or other source, which makes a distribution to composers either directly or through another performing rights society or other person, company, society, association or organization.

(g) If the publisher administers licenses authorizing the manufacture of parts of instruments serving to mechanically reproduce said composition, or the use of said composition in synchronization or in timed relation with sound motion pictures produced by anyone other than: (i) the producer, its subsidiary, and affiliated companies; (ii) any company using the composition in a motion picture financed substantially by or to be distributed by the producer; and (iii) the producer for whom the composition was originally composed, and its subsidiary and affiliated companies; or its reproduction upon electrical transcriptions, or any of them, through an agent, trustee or other administrator acting for a substantial part of the industry and not under the exclusive control of the publisher (hereinafter sometimes referred to as licensing agent), the publisher in determining his receipts, shall be entitled to deduct from gross license fees paid by the licensees, a sum equal to the charges paid by the publisher to said licensing agent.

(h) "Publisher" as used in this Article 6 shall mean the original publisher.

The foregoing rates shall apply only in cases in which all of the music and lyrics of the composition have been composed by the composer, or in cases in which a musical composition has been composed for which no lyrics have been written.

As to songs, if one person composes the music and another the lyrics, the foregoing rates shall apply, but one half shall be allocated to the composer of the music and one-half to the author of the lyrics (no allowance being made for the title). If there shall be more than one composer or more than one lyricist, then they shall agree between themselves upon the division of their half of the above royalties, but in the absence of such agreement, their half shall be divided equally between them.

The royalties hereinabove provided for shall be payable only in connection with compositions originally created by the composer, it being agreed that no royalties shall be payable with reference to arrangements, orchestrations, translations or other adaptations or modifications of compositions written by others.

No royalties shall be payable for any uses made by the producer or by the independent producer for whom the composition was originally composed (or by its or their associated, affiliated, parent or subsidiary corporations or by any persons, firms or other corporations with whom or with which any of said corporations may have contracts or arrangements for the production, performance, television, exhibition or distribution of motion pictures) in motion pictures (theatrical or television) or in connection with any advertising, publicising or exploitation thereof. Nothing herein contained shall be construed to obligate the producer or its licensees or assigns to publish, record, reproduce or otherwise exploit any music or musical composition.

EXHIBIT D - AGREEMENT DATED AUGUST 25, 1972 -
ANNEXED TO AFFIDAVIT OF HARRY GARFIELD

EMPLOYMENT AGREEMENT

August 25, 1972

Mr. John Andrew Tartaglia
3854 Shannon Road
Los Angeles, Calif. 90027

EMPLOYMENT AGREEMENT

August 25, 1972

Mr. John Andrea Tartaglia
3854 Shannon Road
Los Angeles, Calif. 90027

Dear Mr. Tartaglia:

1. We hereby employ you to render your services for us as hereinafter provided in connection with our photoplay tentatively entitled "The New Mexican Connection" (IC CLOUD) Production # 35302 (hereinafter referred to as "the photoplay" or "said photoplay") and you hereby accept such employment. You agree that you will render your services hereunder to such extent we require as a musical conductor and/or composer, including services in composing, adapting, arranging and orchestrating and assist in composing, orchestrating, adapting and arranging the music and/or musical score for said photoplay, and in the performance of such other services as may be required by us in connection with the preparation, rendition, recordation, reproduction and/or synchronization of music, musical compositions and/or scores, and will assist in the organization and conducting of orchestras and generally in connection with such musical work as we may request for or in connection with said photoplay. You agree that if you write and/or contribute to the writing of any lyrics, we shall own and you hereby assign and transfer to us all rights of every kind therein and thereto. You agree that any and all musical material prepared and composed by you hereunder will be turned in to our Music Department in satisfactory form of what is commonly known in the trade as "full orchestral scores." You further agree that we shall have the right if we so desire to cause lyrics to be written to any and all music you write pursuant hereto, and that such lyrics shall be satisfactory in our sole discretion. You further agree that said lyricist shall share in all royalties as set forth in Paragraph 16 hereof. It is clearly understood and agreed that such lyrics may be written for use with said music either in the above-named photoplay or for any other use with said music as we in our sole discretion shall desire.

The term "photoplay" or any other term of like tenor as used herein includes but is not limited to, motion picture productions whether recorded on film or tape or other method of recordation, produced and/or exhibited with and/or publicly performed and/or accompanied by sound and/or voice recording, reproducing and/or transmitting devices, radio devices, television and all other improvements and devices which are now or hereafter may be used in connection with the production and/or exhibition and/or public performance and/or transmission of any present or future kind of motion picture productions, and we shall have the unlimited right to rerun the photoplay on television or release the photoplay theatrically or exhibit the photoplay by methods and inventions either now known or to become known in the future with no additional compensation to you.

2. You agree that you will promptly and faithfully comply with all reasonable instructions, directions, requests, rules and regulations made or issued by us in connection with your services hereunder. You further agree to render your services hereunder conscientiously and to the full limit of your ability at all times, and to complete and deliver to us all material to be prepared by you hereunder by September 5, 1972. You further agree that if so requested by us, you will rewrite, revise and/or change all or any part of the material prepared by you hereunder to such extent as we may desire and you hereby grant us the right to rewrite, revise, and/or change all or any part of such material as we may desire, either for use in said photoplay or in any other photoplay or for any other use as we may in our sole discretion desire. You agree that our judgment shall be final and controlling in all matters respecting the rendition of your services hereunder including those involving artistic taste and judgment.

3. The term of your employment hereunder will commence on or about August 25, 1972 and will continue thereafter until the completion of all of your required services hereunder.

4. (a) On condition that you fully and completely keep and perform all of your obligations and agreements hereunder, we will pay you, as compensation therefor and for all rights herein granted and/or agreed to be granted by you to us, the sum of TWENTY-FIVE HUNDRED DOLLARS * * * * * * * * * * * * * * * * * * ($2,500.00), payable within ten days after completion of your services in connection with said photoplay.

(b) If the compensation provided for in this agreement shall exceed the amount permitted to be paid to you pursuant to any present or future law or governmental order or regulation, said compensation shall be reduced while such limitation is in effect to the amount legally permitted to be paid, and payment of such lesser amount shall be deemed to constitute full performance by us of our obligations hereunder with respect to the payment of compensation.

(c) We shall have the right to deduct and withhold from the compensation payable to you hereunder any amounts required to be deducted and withheld by us pursuant to any present or future law or governmental or judicial order or regulation requiring the withholding or deducting of compensation.

(d) Nothing contained herein shall be deemed to obligate us to use your services hereunder but we shall have fully discharged our obligations hereunder upon payment to you of the amount set forth in this Paragraph 4.

5. (a) In the event production of said photoplay is materially hampered, interrupted, delayed or prevented due to an Act of God, war, riot, civil commotion, fire, strike, labor conditions and/or troubles, act of any federal, state or local instrumentality, morals offense, death, disability or default of any member of cast or the director or producer, unavoidable accident, or for any other reason, similar or dissimilar, beyond our reasonable control, we shall have the right to terminate our obligations hereunder or to suspend your services and our obligations hereunder while such contingency continues, as we may elect.

(b) Your failure, refusal or neglect for any reason whatsoever, including, but not limited to, by reason of sickness, disability (mental or physical), unavoidable accident or default, to render your services hereunder as required by us for rehearsals, "spotting," photography, or otherwise in connection with said photoplay, shall give us the right to terminate your employment and all obligation to you hereunder forthwith.

(c) It is further understood that in the event we pay you any compensation during or in respect of any period when, pursuant to the provisions of this paragraph 5, we are not obliged to do so, the amount so paid shall at, our option, be returned to us upon demand or we may deduct the same from any compensation thereafter accruing to you hereunder (including royalties, which you hereby agree shall be paid to us by the publisher in such amounts as equal amounts due us hereunder) or under any subsequent employment agreement between you and us.

6. We and/or our successors and assigns shall be and be deemed to be the author-at-law in all the results and proceeds of your services, and shall be entitled to and shall own in perpetuity, solely and exclusively, all of such results and proceeds (including, but without limiting the generality of the foregoing, the copyright therein and all rights throughout the world of production, synchronization, recordation, publication, public performance, broadcasting, television, dramatic rights, and reproduction by any art or method now or hereafter to be known, trademark and patent) whether such results and proceeds consist of literary, dramatic, musical, motion picture, mechanical, or other forms of works, themes, ideas, compositions, creations or productions, and irrespective of where and when the foregoing may be achieved by you as long as such results and proceeds are conceived and created for or in connection with any services hereunder and you hereby assign and transfer to us all of the foregoing without any reservation, restriction, limitation or condition whatsoever. In the event that we should desire to secure separate assignments covering any results and proceeds of your services, you agree to execute and deliver the same to us upon our request therefor. Such assignments relating to music, lyrics or other musical material written, composed or created by you during your employment hereunder shall be in the form of Exhibit "A" attached hereto and by this reference incorporated herein; it being expressly agreed that each and all of the rights, privileges, representations, warranties and agreements granted, made and or set forth in said Exhibit "A" shall, with respect to all music, lyrics and other musical material, vest in and inure to our benefit immediately upon the creation thereof whether or not such assignments or any of them are executed. At our option, the execution by you of such assignments may be made a condition precedent to any payment of compensation to you provided for herein. We shall have the further exclusive right to use and display your name, voice and likeness for advertising, commercial and/or publicity purposes during the term of employment and perpetually in connection with all your work hereunder, to advertise and publicize the photoplay, your music and or lyrics or any other photoplay in which your music and or lyrics are used, any sponsor thereof, any series of television programs of which the photoplay may be a part, and the products and services of any sponsor, providing that such use is not in the nature of a direct endorsement or testimonial. You shall not transfer or attempt to transfer any right, privilege, title or interest in or to any of the things above-specified, nor shall you at any time grant the right, authorize, or willingly permit any person, firm or corporation other than us in any way to infringe upon such exclusive rights hereby granted to us and you authorize us in your name, or otherwise, to institute any legal proceedings to prevent such infringement. All rights herein granted to us shall vest in us, whether this agreement is terminated by the completion of all services herein agreed to be performed by you, or is sooner terminated by virtue of any right of termination herein granted to us, or otherwise. Nothing herein contained shall be construed to obligate us to publish, use, license, sell or otherwise dispose of any music and or other works written or composed by you hereunder or of any rights therein or thereto, or to permit other persons, firms or corporations to do so, nor shall we be liable to you in any way for failing to do so or failing to permit others to do so. We shall have the exclusive, sole and complete right (but not the obligation) to publish, use, license, sell or otherwise dispose of, and to permit other persons, firms, and or corporations to publish, use, license, sell and or otherwise dispose of, any music and/or other works written by you hereunder, upon such terms and for such prices and amounts and subject to such conditions and agreements as we in our sole judgment and discretion may deem desirable. We shall also have the right to adjust and settle all disputes with publishers, licensees and all other persons, including the right to make allowances and to give credit and to adjust claims therefor. Your

rights under Paragraph 16 to receive the royalties therein provided for shall not derogate from, limit, prejudice, impair or affect any rights granted to us hereunder.

7. You acknowledge that the services to be rendered by you hereunder and the rights and privileges hereby granted to us by you are of a special, unique, unusual, extraordinary and intellectual character which gives them a peculiar value, the loss of which cannot reasonably or adequately be compensated in damages in an action at law, and that a breach by you of any of the provisions contained herein will cause us irreparable injury and damage. You expressly agree that we shall be entitled to injunctive and other equitable relief to prevent a breach of this agreement by you. Resort to such equitable relief, however, shall not be construed as a waiver of any rights or remedies which we may have for damages or otherwise.

8. No waiver by either of us of any breach of any covenant or provision of this agreement by the other shall be deemed to be a waiver of any preceding or subsequent breach of the same or any other covenant or provision. Each and all of the several rights, remedies and options granted under the terms of this agreement shall be construed as cumulative and no one of them as exclusive of the others or of any right or remedy allowed by law.

9. All notices which we and/or any publisher to whom we assign or otherwise transfer your music and/or lyrics are required or may desire to serve upon you under or in connection with this agreement may be served by addressing the same to you at:

c/o Michael Mesnick, 9171 Wilshire Blvd., Beverly Hills, Calif. 90210

or at such other address as may be designated from time to time in writing by you, or if no such address be designated in writing by you, or if having designated an address you cancel the same and fail to designate a new address in writing, then by addressing the same to you at any place where we have a studio or an office, and in any case by depositing the same so addressed, postage prepaid, in the United States mail or by sending the same so addressed by telegraph or cable or, at our option, we or the aforementioned publisher may deliver the same to you personally either in writing or, unless otherwise specified herein, orally. If we or the aforementioned publisher elect to mail such notice or to send the same by telegraph or cable, such notice shall be deemed to have been served upon you on the date of mailing thereof or the date of delivery thereof to the telegraph or cable office, as the case may be.

10. Nothing in this agreement shall be construed to require the commission of any act contrary to law and if there is any conflict between any provisions of this agreement and any present or future law or governmental order or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the provisions of this agreement shall be limited only to the extent necessary to bring them within the legal requirements.

11. During the term of this agreement, at such time or times and during such period or periods as it may be lawful for us to require you to do so, you shall, at your sole cost and expense, remain or become and remain a member in good standing of the then properly designated labor organization or organizations (as then defined under the then applicable law) representing persons performing services of the type and character that are required to be performed by you hereunder. ~~To the extent that such employment hereunder is governed~~ ~~hereby, this agreement is subject to the conditions of the "Producer-Composers and Lyricists Guild of America Minimum Basic Agree-~~ ~~ment of 1953," and the provisions of said Minimum Basic Agreement are hereby incorporated to the extent applicable.~~

12. Nothing in this agreement shall be construed so as to interfere with, violate or be contrary to the provisions of any collective bargaining agreement to which we are signatory and which applies to any work which you perform hereunder. We shall be entitled to all rights allowed by such collective bargaining agreement except as specifically limited by the terms of this agreement.

13. You agree that you will conduct yourself with due regard to social conventions and public morals and decency and that you will not commit any act or become involved in any situation or occurrence or make any statement tending to degrade yourself in society or to bring you into public disrepute, contempt, scandal, or ridicule or, in our opinion, tending to reflect unfavorably upon us, or any of our affiliated companies, any current or proposed sponsor of said photoplay or of the series of television photoplays in which said photoplay is intended to be exhibited, or such sponsor's advertising agency, or any network or station over which said photoplay is intended to be broadcast. Your refusal, even though in accordance with your legal rights, to testify before any court, congressional or other legislative committee, administrative board or any other duly constituted governmental authority, federal, state or local, or your citation for contempt by any such authority, shall be deemed a breach of this paragraph. In the event that you fail to comply with the provisions of this paragraph or in the event that any publicity occurs after the date hereof with respect to any of the foregoing which has happened in the past, we may forthwith terminate your employment hereunder, or, we may refuse to give you the billing herein provided for, if any, without prejudice to any other rights or remedies which we may have. Any breach by you of the provisions of this paragraph is herein sometimes called a "morals offense."

14. On condition that you fully and completely keep and perform each and all of your obligations and agreements hereunder, and that said photoplay as finally released shall contain a musical score composed solely by you, we agree to give you credit on the positive prints of said photoplay, which credit shall be substantially in the following form:

MUSIC SCORE JOHN ANDREW TARTAGLIA

SUNDAY MYSTERY MOVIE THEME HENRY MANCINI

In the event that said musical score shall have been written by you in collaboration with others, or written only in part by you, or written solely or partially by you but based on musical themes written by others, then the wording of such credit shall be left to our sole discretion and judgment. Nothing herein contained shall be construed so as to prevent so-called "trailers" or other advertising on the screen without mentioning your name, and no casual or inadvertent failure to comply with the provisions of this paragraph shall constitute a breach of this agreement. You expressly agree that no act or omission of third parties, such as, for example, sponsors, networks, broadcasting stations, or any others, shall be, or be deemed to be a breach of this Paragraph 14. It is further understood that we shall be free to use all or part of the results and proceeds of your services hereunder in other photoplays as we in our sole discretion see fit and that in such case no credit as above set forth shall be due or owing to you.

15. You have informed us that you are a member of the American Society of Composers, Authors and Publishers (hereinafter referred to as ASCAP.) and that by reason of your membership therein may have conveyed to ASCAP certain rights or authority to license public performance of the musical material written by you hereunder. However, you grant to us and we shall have the specific and irrevocable right under any and all circumstances, in perpetuity to perform publicly for profit, or otherwise, and to authorize others so to do (by any and all present or future methods and means of public performance, whether or not now known or contemplated) the musical material written by you hereunder or any part or parts thereof, throughout the world.

16. Without in any way derogating from or limiting the sole, exclusive and complete ownership by us of all rights of every kind and character whatsoever in and to all work of every kind done by you hereunder, we agree, conditioned upon the full and complete compliance by you with all your obligations hereunder, that upon publication by a publisher of our choice, of any of the material written by you pursuant to this agreement, it being specifically understood that we have the sole right in our judgment and discretion to have such material altered, edited, arranged or orchestrated in whole or in part in forms suitable for publication as a separate musical composition, or song, or symphonic selection or any other form as we in our sole judgment and discretion shall decide, (which publication is within our sole discretion), we will pay you, or cause such publisher to pay you, in accordance with the usual practice, royalties as follows:

(a) In respect of regular piano copies sold and paid for in the United States, a royalty of five cents ($.05) per copy.

(b) Fifty percent (50%) of all net sums received by such publisher in respect of regular piano copies, orchestrations, band arrangements, octavos, quartets, arrangements for combinations of words and/or instrumets, and/or other copies of the composition *sold in countries other than the United States.*

(c) Ten percent (10%) of the wholesale selling price (after trade discounts, if any) of each copy sold and paid for in the United States and Canada or for export from the United States of orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and/or instruments, and/or other copies of the composition (other than regular piano copies).

(d) Fifty percent (50%) of all gross receipts of such publisher in respect of any licenses authorizing the *manufacture of parts of instruments* serving to mechanically reproduce the music and/or lyrics or to use the music and/or lyrics in synchronization with sound motion pictures or to reproduce it upon electrical *transcriptions* for broadcasting purposes and in respect of folios, the sum of $12.50 for each folio in which any of the results and proceeds of your services hereunder is included, and of any and all gross receipts of such publisher from any other source now known or which may hereafter come in existence, except that you shall not be entitled to any share of the moneys distributed to such publisher by the performing rights organization specified in paragraph 15 hereof, or any other performing rights organization throughout the world which makes a distribution to composers either directly or through the performing rights organization specified in paragraph 15 hereof.

The foregoing rates shall apply only in cases in which all of the words and music of the musical composition have been composed and written solely by you, or in cases of a musical composition written by you hereunder for which no lyrics have been written at the time of the particular use of the music. If others are instrumental with you in composing such words and/or music, the foregoing rates shall be decreased proportionately, it being agreed that one-half (1/2) shall be allowed for the music and one-half (1/2) for the words (there being no allowance for the title). For example: If you compose all of the music and others write the words, then the royalties payable to you hereunder shall be one-half (1/2) of the amounts hereinabove set forth. If you write all of the music and collaborate with two (2) persons in writing the words, the royalties payable to you hereunder would be one-half (1/2) plus one-sixth of the amounts hereinabove set forth. The royalties hereinabove mentioned are payable to you only in connection with compositions originally created by you and are not payable in connection with translations, arrangements, adaptations, paraphrases or orchestrations of other original com-

positions. Any failure on the part of such publisher to pay directly to you the royalties specified herein shall not constitute a breach on our part of any provision of this agreement.

17. You shall not be entitled to receive any royalties or payments for the use of the music and/or lyrics composed by you hereunder in any form of sound reproduction and/or synchronization in or with motion pictures produced and/or distributed by us or by any of our subsidiaries or affiliated companies except such royalties as may be distributed to you by..ASCAP...or any other performing rights society.

18. We agree to assign all rights in the music and/or lyrics composed by you to...Leeds Music Corporation.....,

.....,

a company which is a publisher member of.....ASCAP.....

19. You represent and warrant that you are not under and will not enter into any contractual obligations of any kind to any person, firm or corporation whatsoever which will or might in any way interfere with the execution of this agreement by you or with the full and complete performance by you of each and all of your obligations and agreements hereunder, or which will or might preclude, prevent or interfere with the full and complete exercise and enjoyment by us of each and all of the rights granted to us hereunder. You expressly agree to indemnify and hold us harmless of, from and against any and all loss, cost, damage, liability and/or claim, including attorneys' fees which may be suffered, sustained by or imposed upon us by reason of the breach by you of any of the representations, warranties and/or agreements made and/or to be performed by you hereunder.

20. We, our lessees, licensees and all other persons permitted by us to distribute, exhibit and/or exploit any photoplay in connection with which any musical material written, prepared or composed, in whole or in part, by you hereunder is used, shall have the free and unrestricted right to use any such musical material and to make mechanical reproductions thereof without the payment of any charge or royalties whatsoever, and in no event and under no circumstances shall you be permitted or entitled to participate in any rentals or other sums of money or royalties received by us, our lessees, licensees, or any other persons permitted by us to use any such musical material and/or mechanical reproductions thereof in connection with the exhibition, distribution, exploitation and/or advertising of any present or future kind of photoplays, nor shall we be obligated to account to you for any rentals or other sums of money or royalties received by us from any other persons from the sale, use, licensing or other disposition of any musical material written, prepared or composed, in whole or in part, by you hereunder in connection with the exhibition, distribution, exploitation and/or advertising of any present or future kind of photoplays.

21. We may transfer or assign all or any part of our rights hereunder to any person, firm or corporation, and this agreement shall inure to the benefit of ourselves, our successors and assigns.

If the foregoing is in accordance with your understanding and agreement, kindly indicate your approval and acceptance thereof in the space hereinbelow provided.

This Agreement shall be subject to the provisions of Exhibit B attached hereto and made a part hereof. If there is a conflict between any provision of this Agreement and any provision of said Exhibit B, the provision of said Exhibit B shall control.

Very truly yours,

UNIVERSAL TELEVISION, a division of
Universal City Studios, Inc.

By.....

APPROVED AND ACCEPTED:

.....

JOHN ANDREW TARTAGLIA

EXHIBIT A

MUSIC

ASSIGNMENT OF RIGHTS

KNOW ALL MEN BY THESE PRESENTS:

1. That ..... hereinafter referred to as the "Employee," for and in consideration of the sum of ONE DOLLAR ($1.00) and other good and valuable consideration paid to the Employee by ..... hereinafter referred to as the "Producer," the receipt of which is hereby acknowledged, has given, granted, bargained, sold, assigned, transferred, and set over, and does by these presents give, grant, bargain, sell, assign, transfer and set over, forever, unto the Producer, solely and exclusively, all rights of every kind and character whatsoever throughout the world in and to the music and lyrics written by the Employee under his employment agreement with the Producer, dated ..... , 19..... Said music, lyrics, and other work and/or the results thereof written, prepared, or suggested by the Employee are hereinafter sometimes referred to as the "work"; and said musical composition, including musical score, lyrics, title, arrangement and each and all of the other component parts of said musical composition, is sometimes hereinafter referred to as the "composition." The Employee does further sell, assign, transfer and set over unto the Producer the complete and unencumbered title in and to said work, for all purposes whatsoever, without condition, restriction, or limitation of any kind, and does hereby sell, assign, transfer and set over unto the Producer all of the Employee's right, title and interest in and to said composition.

2. The Employee does further give, grant, bargain, sell, assign, transfer and set over, forever, to the Producer the absolute and unqualified right to use said work and/or said composition in whole or in part, in whatever manner said Producer may desire, including (but not limited to) the right to adapt, arrange, change, transpose, add to and subtract from said work and/or composition, or any part thereof, to such extent as the Producer in its sole discretion may desire. The Producer shall have the right, but not the obligation, to use the name of the Employee in connection with said work and/or composition, or any part or parts thereof, and shall have the further right, but not the obligation, to use the title thereof in connection with said work and/or composition; and/or the Producer may use in connection with said work and/or composition any other title or titles which the Producer may select, and/or the Producer shall have the right to use the title of said work and/or composition in connection with any musical, literary, dramatic or other works not based upon said work and/or composition.

3. The Employee does further hereby give, grant, bargain, sell, assign, transfer and set over, forever, to the Producer the right to obtain copyright in all countries upon said work and/or composition, and to exercise any and all rights and remedies under any such copyright.

4. The Employee hereby represents and warrants that he is the sole composer, author and owner of said work; that the Employee is the sole owner of all rights of any and all kinds whatsoever throughout the world therein and thereto; that there has been no publication thereof or of any part thereof with the knowledge or consent of the Employee anywhere in the world; that the Employee has the sole and exclusive right to dispose of each and every right herein granted and/or purported to be granted; that said work is not, nor is any part thereof, in the public domain but is validly copyrightable throughout the world as an original work; that the Employee has not in any way conveyed, or hypothecated any rights of any kind or character in or to said work and/or composition, or any part thereof, to any person whomsoever other than the Producer, nor has the Employee granted any right, license or privilege with respect to any of the rights or property herein granted and/or purported to be granted to any person other than the Producer; that there is at the date of these presents no litigation pending or threatened affecting the use of said work or composition and/or of the title thereof; that the title thereof is available for use in connection therewith or otherwise; that the Employee has not done or caused or permitted to be done any act or thing by which any of the rights or property herein granted and/or purported to be granted to the Producer have been in any way impaired; and that the Employee will not any time execute any further agreement or agreements in conflict herewith, nor will the Employee do or cause or permit to be done any act or thing by which the rights or property herein granted and/or purported to be granted to the Producer may in any way be impaired. The Employee further represents and warrants that said work is original with the Employee in all respects; that the same is not, nor is any part thereof, taken from or based upon any other musical, dramatic or other work, or in any way infringes upon the copyright or any other right of any individual, person, firm or corporation; and that the use of said work by the Producer in any form whatsoever will not in any way, directly or indirectly, infringe upon the rights of any individual, person, firm or corporation whatsoever.

5. The Employee hereby appoints the Producer the true and lawful attorney of the Employee, irrevocably, but for the sole benefit of the Producer, to renew and/or extend any and all copyrights in the work, to institute and prosecute such proceedings as the Producer may deem expedient to protect the rights herein granted and/or purported to be granted, and/or to effect the recovery by the Producer of damages and penalties for the infringement of said rights, and/or to secure to the Producer the full benefit of all of the rights herein granted and/or purported to be granted, and to collect and receipt for all damages arising from any infringement of said rights, and any recovery costs, and damages collected or received are hereby assigned to and shall belong to the Producer. The Producer may sue in its own name and/or may use the name of the Employee and/or at its option may join the Employee as party plaintiff or defendant in any suit or proceeding brought for such purpose or purposes.

6. The Employee hereby guarantees and warrants that the Employee will indemnify, make good, and hold harmless the Producer of, from and against any and all loss, damage, costs, charges, legal fees, recoveries, judgments, penalties and expense which may be obtained against, imposed upon, or suffered by the Producer by reason of any infringement or violation or alleged infringement or violation of any copyright or any other right of any individual, person, firm or corporation, or by reason of or from any use which may be made of said work and/or composition by the Producer, or by reason of the breach of any term, covenant, representation or warranty herein contained, or by reason of anything whatsoever which might prejudice the securing to the Producer of the full benefit of the rights herein granted and/or purported to be granted. The foregoing guarantee and warranties shall not apply to any change in said work and/or composition which may be made by the Producer.

7. The Employee hereby agrees duly to execute, acknowledge and deliver, and/or to procure the due execution, acknowledgement and delivery, to the Producer of any and all further assignments and/or other instruments which in the sole judgment and discretion of the Producer may be deemed necessary or expedient to carry out or effectuate the purposes and intent of this present instrument.

8. If the names of two or more persons appear hereinabove in Paragraph 1 as the "Employee," or if this instrument be executed by two or more persons, then and in that event this agreement shall be binding jointly and severally upon said persons, and each of them, and each and all of the representations, warranties, agreements, and obligations on the part of the Employee, hereinabove set forth, shall be and be deemed to be the joint and several representations, warranties, agreements and obligations of said persons, and each of them, and the terms "Employee" and "he" (wherever "he" refers to the Employee) shall be deemed to include and apply to all persons who are described as the "Employee"; and wherever the context so requires, the masculine gender shall include and apply to all genders, and the singular shall apply and include, as well, the plural. The term "Producer," as used herein, shall include the Producer herein named and, as well, its successors and assigns. The Producer may assign, transfer and grant all or any part of the rights herein granted it to any individual, firm, person or corporation, without limit, and shall enjoy its rights hereunder in perpetuity and forever, as long as any rights in said composition are recognized in law or in equity, except insofar as such period of perpetuity may be shortened due to any copyrighting by the Producer of said work and/or composition, in which case the Producer shall enjoy its rights hereunder for the full duration of such copyright or copyrights, including any and all renewals and extensions thereof.

IN WITNESS WHEREOF the Employee has set his hand this ..... day of ....., 19.....

.....
(Employee)

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss

On this ..... day of ....., 19....., before me, ...,
a notary public in and for said county and state, residing therein, duly commissioned and sworn, personally appeared .....
..... known to me to be the person whose name.... is/are subscribed to the foregoing instrument, and acknowledged to me that ....he....executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day ...

EMPLOYEE FOR HIRE CERTIFICATE

I hereby certify that I wrote the music ~~and lyrics~~ for the musical composition entitled

"The New Mexican Connection" (MC CLOUD) #35302

as an employee of UNIVERSAL TELEVISION, a division of Universal City Studios, Inc. (herein called "Employer") pursuant to an agreement dated August 25, 1972 in performance of my duties thereunder and in the regular course of my employment and that said Employer is the author thereof and entitled to the copyright therein and thereto, and any and all renewals and extensions thereof, with the right to make such changes therein and such uses thereof as it may determine as such author.

John Andrew Tartaglia

JOHN ANDREW TARTAGLIA

EXHIBIT D - AGREEMENT DATED AUGUST 25, 1972 -
ANNEXED TO AFFIDAVIT OF HARRY GARFIELD

EXHIBIT "B"

This exhibit is attached to and is part of Employment Agreement dated August 25, 1972 between Universal Television, a division of Universal City Studios, Inc. (referred to herein as "producer") and John Andrew Tartaglia (referred to herein as "composer").

EXHIBIT "B"

This exhibit is attached to and is part of Employment Agreement dated August 25, 1972 between Universal Television, a division of Universal City Studios, Inc. (referred to herein as "producer") and John Andrew Tartaglia (referred to herein as "composer").

ARTICLE 1 Credits for Screen Composition

(a) Screen Credit for composition is to be given for the initial use of the composed music or lyrics, but only in the motion picture for which it was specifically composed and used, and only to those who actually composed such music and/or lyrics so used, as follows:

Underscoring

Each composer whose music composed for the picture constitutes more than one-third (1/3) of the total underscoring contained in the final motion picture, which contribution shall be determined in minutes, shall be given screen credit. However, in no event shall Producer be required to give more than two such composers such credit. If one-third (1/3) or more of the total underscoring used in the motion picture is by one composer, he is to receive credit even if the music was previously used, unless such composer does not desire a credit, or it would be a burden on producer to make such a determination. In any event, credit for any such re-used music need be given by producer to only one composer. Producer, however, may give credit for composition underscoring to a composer whose music is less than one-third (1/3) of the total underscoring contained in the motion picture.

The form of underscoring screen credit shall be:

Where the composer composed all of the music, or where the composer composed all of the music except that for which credit is specifically given to others, the form of underscoring screen credit shall be "Music by" or "Music Score by" or "Music Composed by" or "Music Score Composed by" or words of similar nature. Where the composer has composed a theme for a television film without lyrics, the screen credit shall be "Theme by". In all other cases where the composer composed less than all of the music and credit is not given to others, the form of credit shall be "Music Scored by" or such other credit as may be agreed upon between the composer and producer.

The form of screen credit for songs shall be:

"New Songs by", or "Song by", or "Songs by"; or "Original Songs by"; or "Music & Lyrics by", or "Words and Music by"; or "Words by and Music by"; or "Lyrics by and Music by", "Theme by" (for television films), or words of a similar nature, and in addition such other credits as may be agreed upon by the composer and producer.

(b) The producer shall not be limited as to the size or placement of the credit.

(c) With respect to material purchased or otherwise licensed, producer shall have the unlimited right, as it may see fit, to give or not give screen credit for the composition of music or lyrics in any manner.

(d) If a composer, at the time of his employment or at any time thereafter, states in writing that he is not and never was a member of the Communist Party, and such representation is shown to have been false, or if a composer at any time refuses on request of producer to make a statement as to whether he is or ever was a member of the Communist Party, or if a composer upon such request states in writing that he is a member of the Communist Party, or if a composer before the House-Un-American Activities Committee or any similar duly constituted Congressional or State Legislative or executive committee, has refused to testify as to whether he is or was a member of the Communist Party, or if a composer having been subpoenaed to appear before such a committee fails or refuses to appear in response to such subpoena, the producer shall be relieved of any obligations to accord credit to the composer under his employment agreement.

The producer, however, shall not be relieved of its obligation to give such credit by reason of any act or failure to act, on the part of the composer, described in the preceding sentence, if prior to the composer's employment by the producer (i) such act or failure to act by such composer had occurred and (ii) such occurrence was known to the producer.

ARTICLE 2 Rights Arising From Composition

(a) As used in this Article 2, the following terms shall have the following meanings:

"Composition" means any and all music and lyrics written, composed, submitted, added, improvised, interpolated or invented by the composer in the course of his employment by the producer.

"Society" means any performing rights society, or other collection agency or organization, which, either directly or through affiliates, maintains a regular system of collecting fees from the users of compositions for the privilege of performing the same in public for profit, for the benefit of both composer-members and publisher-members, and which divides its aggregate net collections of such fees equally between its publisher-members and composer-members, or which has agreed in writing to divide its net collections with respect to performances of the compositions involved equally between the composer and the publisher, hereinafter referred to.

"Performing Rights" means those public performing rights which are, from time to time, as a practical matter, administered and controlled by the Society involved.

(b) The producer, as employer for hire of the composer, is entitled to and shall own all rights of every kind and character without any restriction, limitation or reservation whatsoever, in and to the compositions, and the copyrights therein, and any and all renewals and extensions of such copyrights everywhere in the world, specifically including the copyrights and all renewals and extensions thereof in the United States. Without limiting the

generality of the foregoing, it is specifically understood and agreed that included in the ownership of all rights of the producer in and to the compositions is the specific and irrevocable right under any and all circumstances, in perpetuity, to perform publicly for profit, or otherwise, and to authorize others so to do (by any and all present and future methods and means of public performance, whether or not now known or contemplated) the compositions, or any part or parts thereof, throughout the world. Such rights include, but are not limited to, the Performing Rights, as hereinabove defined.

(c) In order to assure the composer of participation in the revenue which may be derived from performances of the compositions, producer agrees that in the event the composer is, on the date of his employment by producer, a member or licensor of a Society, producer will, and it does hereby, transfer and assign the world-wide Performing Rights (as hereinabove defined) in and to the compositions to the composer and a publisher of producer's choice, which publisher may, but need not, be a subsidiary or affiliate of producer, but which publisher shall be a member or licensor of the same Society, or of an affiliate of the same Society, as the composer. Notwithstanding anything herein contained, however, there is hereby excepted and reserved from said transfer and assignment the non-exclusive right to perform the compositions in any and all situations, throughout the world, where it is, or may from time to time be, unlawful for the Society, or any of its affiliated bodies to collect performance fees, or where the Society, or any of its affiliated bodies, does not, from time to time, for any reason whatsoever, actually maintain a regular system of collecting performance fees. In any and all such situations, the producer may authorize the performance of the compositions in and as a part of the motion picture in which they are included and trailers thereof, or otherwise, without payment of any performance fees whatsoever to the composer, or to the Society, or to the publisher or anyone else.

(d) The producer has agreed to and does hereby transfer and assign the Performing Rights, as set forth in paragraph (c) above, only conditioned upon and subject to the following:

(1) That the motion pictures (including trailers) and copies thereof containing the compositions may be exhibited at any place in respect of which there is subsisting a valid license granted by the Society or by one of its affiliated bodies (as the case may be).

(2) That no such license shall be required for performing the compositions:

(i) for the purpose of reproducing the same in synchronism or timed relation with the motion pictures and copies thereof during the production thereof;

(ii) in any of the situations referred to in paragraph (c) hereof with respect to which producer reserves the non-exclusive right to perform the compositions.

(3) That if the proprietor or licensee of any place capable of being licensed by the Society or one of its affiliated bodies fails or neglects to hold a license, as aforesaid, the right of the Society, or of the affiliated body concerned, shall be against such person exclusively.

(4) That, under no circumstances, shall the Society, or any of its affiliated bodies, or the composer or any successor in interest of the composer, or the publisher have the right to take any proceedings in respect of any unlicensed performance that would have the effect of enjoining and/or preventing and/or otherwise interfering with the public performance anywhere in the world and by any means or method now or hereafter known of the motion pictures or any portion thereof or any trailer thereof with the compositions included therein, nor shall the producer or the publisher be liable to the composer for any action that the Society or any of its affiliated bodies may or may not take in administering the Performing Rights or for any payments that the Society may or may not make to the composer.

(5) That the compositions need not be published as a condition of the payment of the publisher's share of performance fees.

(6) That neither the producer nor the distributor nor the publisher shall, under any circumstances, be liable to the composer or his successors in interest, or to the Society or its affiliated bodies, nor shall the producer or the distributor be liable to the publisher, for any payment of any sums by reason of performance of the compositions as contained in the motion pictures, or otherwise.

(7) That under no circumstances shall the composer or his heirs, executors, administrators or other personal representatives, agents or assigns have the independent right to license performances of the compositions as included in the motion pictures or trailers thereof, or to otherwise interfere in any way with the distribution and exhibition of such motion pictures containing the compositions.

(8) That if, after the transfer and assignment referred to in paragraph (c) hereof, the composer should resign from or cease to be a member or licensor of the Society, the Performing Rights in and to the compositions involved shall, nevertheless, continue to be controlled and administered by the Society so long as the publisher remains a member of said Society, that if, after said transfer and assignment, the publisher should resign from, or cease to be a member or licensor of the Society or an affiliate of the Society, the Performing Rights in and to the compositions involved shall, nevertheless, continue to be controlled and administered by the Society so long as the composer remains a member of said Society; and that if, after said transfer and assignment, both the composer and the publisher shall no longer be members or licensors of the Society or the Society should cease to exist or function, then the Performing Rights in and to the compositions involved shall revert to the producer.

Notwithstanding the transfer and assignment referred to in paragraph (c) hereof, it is agreed that the publisher shall always have the right to transfer the Performing Rights acquired by it pursuant thereto to another publisher which is a member of the same Society, and the producer shall always have the right to cause the Performing Rights to be transferred to another publisher which is a member of the same Society.

(9) That for the purpose of protecting the motion picture in which any composition is used or to be used, the producer or the publisher shall always have the right to impose restrictions upon the performance of such composition apart from such motion picture.

ARTICLE 3 Location Expenses

If a composer is required by the producer to perform services on any location sufficiently far away from the producer's studio so that overnight accommodations are reasonably necessary, the producer shall furnish and pay for the reasonable board and lodging of the composer while required to remain on any such location, and agrees to furnish for the composer first-class transportation, if available, to and from any such location, it being understood that such first-class transportation need not include a drawing room or compartment or passage on any so-called "extra fare" train, and the producer may in any contract of employment between the producer and a composer designate a reasonable daily maximum liability on the part of the producer for such board and lodging of the composer.

In addition, producer shall furnish at such location a musical instrument and such mechanical reproducing and playback instruments as may be necessary or required in connection with his composition.

ARTICLE 4 Flight Insurance.

Producer will provide a minimum coverage of $20,000 flight insurance for each composer who travels by airplane, at the direction of the producer, during his employment. Composer shall be permitted to fill out a form specifying a beneficiary. Such form shall be filed with the designated representative of the producer.

ARTICLE 5 Minimum Compensation

(a) Definition of a qualified composer and song writer:

(1) A qualified composer of underscoring is a composer who has screen credit for one feature length picture, three one-half (1/2) hour or one one-hour (1) or more in length television motion picture, or 52 weeks of employment in the motion picture industry, as a composer of underscoring.

(2) A qualified song composer is a composer who has two published songs or who composed two separate songs each of which is completely contained in a motion picture produced and released in the American motion picture industry or who has had 52 weeks of employment in the American motion picture industry as a composer of either or both song music or song lyrics.

(b) Wage Scale Minimum Compensation:

(1) There are no minimum compensation requirements with respect to unqualified composers.

(2) The minimum compensation per week for a qualified composer for composition only, shall be:

	Television Motion Pictures	Theatrical Motion Pictures
Term Contract:	$357.50	$393.25
Week to week:	$385.00	$423.50

The above salary shall commence and apply when an assignment is made under the producer's direction and control. The above television weekly rate shall apply in term or week-to-week employment in any week in which no work hereunder is performed in a theatrical motion picture; in any week in which such work is performed in both theatrical and television motion pictures the theatrical motion picture rate will apply for that week. For these purposes, a term contract is a personal service contract for a term of at least ten out of thirteen weeks or any like ratio for a longer period. A week-to-week contract is a personal service contract for a term of less than ten out of thirteen weeks. A composer employed on a weekly basis, may be terminated at any time after one week.

If any composer under a week-to-week or term contract shall render services after the expiration of the period for which his specified compensation is provided in the employment contract and no additional amount is specified for such additional period, then in such event the composer shall receive the weekly rate specified in such contract for each week, or, for purpose only of prorating days worked in a partial workweek (of less than six (6) days), one-fifth (1/5) for each such a day worked during which the composer shall render such additional services. In any week of employment when the producer may under this agreement employ the composer for less than one full week (i.e. after one week or after the term of the agreement), if the composer shall render services in composition and also other services not covered by this agreement his minimum compensation for composition shall be prorated in proportion to the amount of time required by producer for composition.

(3) In the alternative, when the employment for composition, excluding songs, is for television films only, and it is non-exclusive employment, the minimum compensation shall be:

a) Not less than $192.50 for a half-hour show.
b) Not less than $385 for a one-hour show.
c) Not less than $550 for a one and one-half hour show.
d) Five minutes or less of new music, not less than $100.

The above rates of $192.50 for a half-hour show, $385 for an hour show, and $550 for a one and one-half hour show shall be applicable where more than five minutes of new music is composed for a program.

Where more than five minutes of new music is composed and more than one composer is employed, the combined payments to such composers shall be not less than $200 for a half-hour show or $385 for an hour show. In no event shall a composer who composes five minutes or less of new music, under such circumstances, be paid less than $100 if he composed "a five minute or less fragment."

(4) The minimum compensation for employment for the composition of songs shall be governed by the theatrical rate provisions of (b) (2) of this article only.

(5) Any amounts paid to the composer in excess of the minimum compensation, as provided above, may be applied to any other payments (except royalties provided for by Article 6), required under this agreement.

(6) Theatrical Exhibition of Television Films:

In the event a television motion picture or pictures containing music composed on or after the effective date of this agreement, under the provisions of Article 5(b)(3) above, is exhibited theatrically (as one or in combination) producer shall pay to the composer or composers of such music, so used, in such exhibition, the following applicable single amount for an unlimited number of such exhibitions:

The amount, if any, that (i) $735 exceeds the compensation paid such composer or composers for a half-hour show so used; or (ii) $770 exceeds the compensation paid such composer or composers employed for a one-hour show so used; or (iii) $1,100 exceeds the compensation paid such composer or composers employed for a one and one-half hour show so used; or (iv) $40 exceeds the compensation paid such composer or composers employed for each minute of a five minute or less fragment so used.

If the producer shall sell, assign, transfer or otherwise dispose of its theatrical exhibition rights in any such television film or shall license the distribution rights to such theatrical exhibition, producer shall be responsible, or shall require its purchaser or licensee to become responsible for compliance with this provision relating to the initial theatrical exhibition of the film. Upon obtaining such agreement from such purchaser or licensee, producer shall be relieved of further obligation hereunder, provided producer sends to the Guild, within 30 days thereafter, a copy of such assumption agreement.

(7) Unused Music:

With respect to theme music or songs intended to be used in a television pilot film, if such pilot is not made within three (3) years after the composition of the theme music or song is completed, the composer of such theme music or song will have a twelve-month option period, commencing with the end of such three-year period, within which to purchase back all rights in such theme music or song, at the producer's cost. If the composer does not exercise such option in such option period, such option shall thereupon be terminated. If producer uses such theme music or song in a pilot or otherwise exploits the theme music or song before the composer has completely exercised his option in such option period, the composer's right to such option shall thereupon terminate. If the composer so exercises such option, within such option period, producer nevertheless shall have the non-exclusive right to use such theme music or song in the particular pilot for which the theme music or song was composed, or in any series based on such pilot.

With respect to songs, if the song intended to be used in a motion picture, other than television pilot films, is not used or otherwise exploited, within five (5) years after the composition of the song is completed, the composer will have a thirty-six month option period commencing with the end of such a five-year period within which to purchase back all rights in such song, at the producer's cost. If the composer does not exercise such option in such option period such option shall thereupon be terminated. If producer uses such song in a motion picture, or otherwise exploits it, before the composer completely exercised his option in such option period the composer's right to such option shall thereupon terminate. If the composer so exercises such option, within such option period, producer nevertheless shall have the non-exclusive right to use such song in motion pictures.

Costs shall be deemed to be the amount producer paid to the composer for such musical composition, plus fringe benefits and taxes. The composer shall receive back only the music as written in the manuscript delivered to the producer.

ARTICLE G Publication Royalties

Should the producer, or any subsidiary or affiliated company, or any assignee or licensee of producer, exploit the music or musical composition (hereinafter referred to as the "composition") then the producer, or such subsidiary or affiliated company, or such assignee or licensee, shall pay directly to the composer an amount of royalty with respect to such composition not less than the following, and producer's contract with such subsidiary or affiliated company, or assignee or licensee, shall so require and if producer's contract does so provide then producer shall not be responsible for payment of the royalties hereunder:

(a) Five cents (5 cents) per copy in respect of regular piano copies sold and paid for in the United States and Canada.

(b) Fifty percent (50%) of all net sums received by the publisher in respect of regular piano copies, orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and/or instruments, and/or other copies of the composition sold in any country other than the United States and Canada; provided, however, that if the publisher should sell such copies through, or cause them to be sold by, a subsidiary or affiliate or any assignee or licensee which is actually doing business in a foreign country, then in respect of such sales, the publisher shall pay to the composer not less than ten percent (10%) of the wholesale selling price in respect of each such copy sold and paid for.

(c) Ten percent (10%) of the wholesale selling price (after trade discounts if any) of each copy sold and paid for in the United States and Canada, or for export from the United States, of orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and/or instruments, and/or other copies of the composition (other than regular piano copies).

(d) (i) If the composition, or any part thereof, is included in any song book, song sheet, folio or similar publication issued by the publisher containing at least four (4), but not more than twenty-five (25) musical compositions, the royalty to be paid by the publisher to the composer shall be an amount determined by dividing ten percent (10%) of the wholesale selling price (after trade discounts, if any) of the copies sold, among the total number of copyrighted musical compositions included in such publication. If such publication contains more than twenty-five (25) musical compositions, said ten percent (10%) shall be increased by an additional one-half percent (1/2%) for each additional musical composition.

(ii) If, pursuant to a license granted by the publisher to a licensee not controlled by or affiliated with it, the composition, or any part thereof, is included in any song book, song sheet, folio or similar publication, containing at least four (4) musical compositions, the royalty to be paid by the publisher to the composer shall be that proportion of fifty percent (50%) of the gross amount received by it from the licensee, as the number of uses of the composition under the license and during the license period, bears to the total number of uses of the publisher's copyrighted musical compositions under the license and during the license period. Such royalties shall be computed and paid within thirty (30) days after the expiration of the term of each license, but if any such license term is in excess of one year, such royalties shall be computed and paid annually.

(iii) In computing the number of the publisher's copyrighted musical compositions under subdivision (ii) hereof, there shall be excluded musical compositions in the public domain and arrangements of musical compositions in the public domain if no royalties are payable with respect to such arrangements by the publisher.

(iv) Royalties on publications containing less than four (4) musical compositions shall be payable at regular piano copy rates.

(e) As to "professional material" not sold or resold, no royalty shall be payable.

(f) Fifty percent (50%) of all net sums actually received by the publisher in respect of any licenses (including statutory royalties) authorizing the manufacture of parts of instruments serving to mechanically reproduce the composition; or to use the composition in synchronization with sound motion pictures produced by anyone other than: (i) the producer, its subsidiary, and affiliated companies; (ii) any company using the composition in a motion picture financed substantially by or to be distributed by the producer; and (iii) the producer for whom the composition was originally composed, and its subsidiary and affiliated companies; or to reproduce it upon electrical transcription for broadcasting purposes; except that the composer(s) shall not be entitled to any share of the monies distributed to the publisher by any performing rights society anywhere in the world, or other source, which makes a distribution to composers either directly or through another performing rights society or other person, company, society, association or organization.

(g) If the publisher administers licenses authorizing the manufacture of parts of instruments serving to mechanically reproduce said composition, or the use of said composition in synchronization or in timed relation with sound motion pictures produced by anyone other than: (i) the producer, its subsidiary, and affiliated companies; (ii) any company using the composition in a motion picture financed substantially by or to be distributed by the producer; and (iii) the producer for whom the composition was originally composed, and its subsidiary and affiliated companies; or its reproduction upon electrical transcriptions, or any of them, through an agent, trustee or other administrator acting for a substantial part of the industry and not under the exclusive control of the publisher (hereinafter sometimes referred to as licensing agent), the publisher in determining his receipts, shall be entitled to deduct from gross license fees paid by the licensees, a sum equal to the charges paid by the publisher to said licensing agent.

(h) "Publisher" as used in this Article 6 shall mean the original publisher.

The foregoing rates shall apply only in cases in which all of the music and lyrics of the composition have been composed by one composer, or in cases in which a musical composition has been composed for which no lyrics have been written.

As to songs, if one person composes the music and another the lyrics, the foregoing rates shall apply, but one-half shall be allocated to the composer of the music and one-half to the author of the lyrics (no allowance being made for the title). If there shall be more than one composer or more than one lyricist, then they shall agree between themselves upon the division of their half of the above royalties, but in the absence of such agreement, their half shall be divided equally between them.

The royalties hereinabove provided for shall be payable only in connection with compositions originally created by the composer, it being agreed that no royalties shall be payable with reference to arrangements, orchestrations, translations or other adaptations or modifications of compositions written by others.

No royalties shall be payable for any uses made by the producer or by the independent producer for whom the composition was originally composed (or by its or their associated, affiliated, parent or subsidiary corporations or by any persons, firms or other corporations with whom or with which any of said corporations may have contracts or arrangements for the production, performance, television, exhibition or distribution of motion pictures) in motion pictures (theatrical or television) or in connection with any advertising, publicising or exploitation thereof. Nothing herein contained shall be construed to obligate the producer or its licensees or assigns to publish, record, reproduce or otherwise exploit any music or musical composition.

EXHIBIT E - SUMMARY LIST OF COMPOSERS WITH UNIVERSAL FILE NUMBERS, AND OTHER DATA - ANNEXED TO AFFIDAVIT OF HARRY GARFIELD

(Reproduced herein at pages 403a through 518a)

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Bergman, Alan & Marilyn Bergman	68-214 (02018	N/a; lyricists contract	N/a *
	68-215 (02012)	N/a; publishing royalty contract	N/a
	71-315 (02043)	Theatrical- Lyricists contract (N/a)	N/a
	73-415 (02059)	Theatrical Lyricists contract (N/a)	N/a
Bernstein, Elmer	33905	TV Contract	No
	33906	" "	No
	33907	" "	No
	33910	" "	No
	33911	" "	No
	33916	" "	No
	33921	" "	No
	33925	" "	No
	34801	" "	No
	34803	" "	No
	34806	" "	No
	34807	" "	No
	34808	" "	No
	34810	" "	No
	34812	" "	No
	34814	" "	No
	34815	" "	No
	34822	" "	No
	34831	" "	No
	83364	" "	No
Carter, Bennett	26546 (05118)	" "	No
	28724	" "	No
	28931	" "	No

* N/a means not available at this time

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Carter, Bennett (cont)	29141	TV Contract	No
	29331	" "	No
	29942	" "	No
	30103	" "	No
	31255	" "	No
	31256	" "	No
	31403	" "	No
	31409	" "	No
	32362A	No contract in file	
	83333	TV Contract	No
Del Bario, George	32010	" "	No
	32020	" "	No
De Jesus, Luchi	29326	" "	No
	33203	" "	No
	35607	" "	No
Drasnin, Robert	35801	" "	No
	35805	" "	No
	35814	" "	No
	83373	" "	No
Elliott, Jack	36004	" "	No
	36005	" "	No
	36009	" "	No
	83340	" "	No
	83351	" "	No
	83363	" "	No
Faith, Percy	67-327 (01998)	Theatrical-Contract	No
	67-328 (01998)	N/a; publishing royalty contract	N/a

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Ferraro, Ralph	26553	TV Contract	No
	28508	" "	No
	28518	" "	No
	28520	" "	No
	28529	" "	No
	29207	" "	No
	29209	" "	No
	29226	No contract in file; unproduced	
	30005	TV Contract	No
	31130	" "	No
	31247	" "	No
	31301	" "	No
	31707	" "	No
	31718	" "	No
	31721	" "	No
	67-131 (01993)	Theatrical-Contract	No
	67-133 (01993)	N/a; publishing royalty contract	N/a
	67-527 (01997)	Theatrical-Contract	No
	67-528 (01997)	N/a; publishing royalty contract	N/a
	67-720 (02004)	Theatrical contract Employment terminated.	No
	67-721 (02004)	N/a; publishing royalty contract; employment terminated	N/a

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Fielding, Jerry	31307	TV Contract	No
	31311	" "	No
	31320	" "	No
	32011	" "	No
	33204	" "	No
	33207	" "	No
	33212	" "	No
	33215	" "	No
	35602	" "	No
	35606	No contract in file	
	35613	TV Contract	No
	38906	" "	No
Fine, Sidney	28504	" "	No
	28508	" "	No
	31409	" "	No
	80024	" "	No
	67-1159 (83343)	" "	No
Fox, Charles	70-107 (02037)	Theatrical contract	No
Fried, Gerald	28402	TV Contract	No
	28406	" "	No
	28410	" "	No
	28412	" "	No
	28413	" "	No
	28414	" "	No
	35905	" "	No
	67-198 (28400)	N/a; song writer contract	N/a
Gimbel, Norman	69-410 (02017)	N/a; lyricists contract	N/a
	70-106 (02037)	Theatrical contract Lyricists contract (N/a)	N/a

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Goldenberg, William	26553	TV Contract	No
	26558	" "	No
	26562	" "	No
	26563	" "	No
	26587	" "	No
	26593	" "	No
	26594	" "	No
	26597	" "	No
	29136	" "	No
	29149	" "	No
	29314	" "	No
	29330	" "	No
	29607	" "	No
	29938	" "	No
	29964	" "	No
	30710	" "	No
	30717	" "	No
	31203	" "	No
	31207	" "	No
	31212	" "	No
	31214	" "	No
	31243	" "	No
	31308	" "	No
	31319	" "	No
	31922	" "	No
	32408	" "	No
	33302	" "	No
	33306	" "	No
	33310	" "	No
	33404	" "	No

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Goldenberg, William (cont)	33411	TV Contract	No
	34111	" "	No
	35110	" "	No
	35902	" "	No
	80016	" "	No
	80028	" "	No
	83358	" "	No
	83366	" "	No
	69-621 (02032)	Theatrical Contract	No
	70-686 (02045)	" "	No
	70-742 (31300)	TV Contract	No
	70-784 (32000 32100 32200 32300)	" "	No
	72-569 (35907)	" "	No
	73-150 (35434)	" "	No
	73-176 (83384)	" "	No
Grusin, David	26520	" "	No
	26540	" "	No
	28517	" "	No
	29001	" "	No
	29102	" "	No
	29107	" "	No
	31305	" "	No
	31313	" "	No
	31711	" "	No

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Grusin, David (cont)	34104	TV Contract	No
	83336	" "	No
	83380	" "	No
	68-207 (02012)	Theatrical Contract	No
	68-208 (02012)	N/a; publishing royalty contract	N/a
	68-658 (29100)	TV Contract	No
	68-990 (02017)	Theatrical Contract	No
	69-242 (02023)	" "	No
	70-414 (31400)	TV Contract	No
	70-415 (31500)	" "	No
	70-416 (31600)	" "	No
	71-166 (02047)	Theatrical Contract	No
	71-612 (02048)	" "	No
Hamlisch, Marvin	32808	TV Contract	No
	32810	" "	No
Hazard, Richard	33704	" "	No
	33705	" "	No
	33708	" "	No
	33709	" "	No
	33710	" "	No
	33713	" "	No
	69-976 (83353)	" "	No

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Jarre, Maurice	68-780 (05025)	No provision	No
	69-383 (02026)	Theatrical Contract	No
	68-1021 (29801)	TV Contract	No
Johnson, J.J.	32801	" "	No
Jones, Quincy	26528	TV Contract	No
	28702	" "	No
	28706	" "	No
	67-444 (01989)	Theatrical Contract	No
	67-445 (01989)	N/a; publishing royalty contract	No
	67-483 (28700)	TV Contract	No
	67-1094 (26539/ 02015)	" "	No
	69-162 (02025)	Theatrical Contract	No
	69-344 (02025)	N/a; song writing contract	No
	69-409 (02025)	" "	No
	69-486 (02025)	" "	No
	69-487 (02025)	" "	No
	72-529 (36000 36100 36200)	TV Contract	No
Mancini, Henry	71-186 (02043)	Theatrical Contract	No

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Mancini, Henry (cont)	71-490 (33200 33300 33400)	TV Contract	No
	71-679 (05110)	Theatrical Contract	No
Markowitz, Richard	35120	TV Contract	No
Melle, Gilbert	26547	" "	No
	26571	" "	No
	28742	" "	No
	31324 (83383)	" "	No
	32206	" "	No
	32209	" "	No
	32213	" "	No
	32214	" "	No
	33301	" "	No
	33313	" "	No

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Melle, Gilbert (cont)	33578A	TV Contract	No
	34302A	" "	No
	34302B	" "	No
	34302D	" "	No
	35103	" "	No
	35105	" "	No
	35114	" "	No
	70-429 (02034)	Theatrical Contract	No
	70-662 (32300)	TV Contract	No
	71-429 (33500)	" "	No
	72-183 (83375)	" "	No
	72-184 (31316)	" "	No
	72-401 (02053)	Theatrical Contract	No
	73-177 (35125)	TV Contract	No
	73-201 (31325)	" "	No
	73-264 (31326)	" "	No
Mizzy, Vic	34129	" "	No
	67-430 (01996)	Theatrical Contract	No
	67-431 (01996)	N/a; publishing royalty contract	N/a
	67-455 (02005)	Theatrical Contract	No
	67-456 (02005)	N/a; publishing royalty contract	N/a
	69-138 (02027)	Theatrical Contract	No
	70-216 (02040)	" "	No

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Murray, Lynn	26512	TV Contract	No
	26545	" "	No
	26577	" "	No
	28202	" "	No
	28203	" "	No
	28206	" "	No
	28207	" "	No
	28209	" "	No
	28210	" "	No
	28213	" "	No
	28215	" "	No
	28219	" "	No
	28803	" "	No
	28804	" "	No
	28805	" "	No
	28808	" "	No
	28809	" "	No
	28810	" "	No
	28812	" "	No
	28815	" "	No
	28818	" "	No
	28822	" "	No
	28826	" "	No
	29232	" "	No
	29611	" "	No
	30604	" "	No
	30711	" "	No
	30723	" "	No
	31306	" "	No
	31710	" "	No
	31717	" "	No
	31940	" "	No

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Murray, Lynn (cont)	31943	No contract in file	
	32813	TV Contract	No
	33908	" "	No
	83365	" "	No
	67-282 (01999)	Theatrical Contract	No
	67-283 (01999)	N/a; publishing contract	N/a
	68-531 (02021)	Theatrical Contract	No
	69250 (02027)	N/a; song writing contract	N/a
	69-928 (26551/ 05081)	TV Contract	No
Riddle, Nelson	31317	TV Contract	No
	33601	" "	No
	33602	" "	No
	33607	" "	No
	33608	" "	No
	33609	No contract in file	
	33610	TV Contract	No
	33613	" "	No
	33614	" "	No
	34404	" "	No
	35701	" "	No
	35702.	" "	No
	35706	" "	No
	35707	" "	No
	35708	" "	No
	35711	" "	No
	35718	" "	No
	35720	" "	No
	71-498 (33603)	" "	No

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Rogers, Milton	26512	TV Contract	No
	26537	" "	No
	83348	" "	No
Romanis, George	31324	" "	No
	73-134 (31324)	" "	No
Rose, David	34106	" "	No
	34119	" "	No
	36001	" "	No
Rosenman, Leonard	26511	" "	No
	26554	" "	No
	27721	" "	No
	28531	" "	No
	28549	" "	No
	28908	" "	No
	28910	" "	No
	28912	" "	No
	28916	" "	No
	28921	" "	No
	29213	" "	No
	29215	" "	No
	29221	" "	No
	30008	" "	No
	30020	" "	No
	30805	" "	No
	30808	" "	No
	30809	" "	No
	30810	" "	No
	30811	" "	No
	30812	" "	No
	30814	" "	No
	30818	" "	No

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Rosenman, Leonard (cont)	30826	TV Contract	No
	31102	" "	No
	31103	" "	No
	31105	" "	No
	31107	" "	No
	31108	" "	No
	31110	" "	No
	31111	" "	No
	31116	" "	No
	31117	" "	No
	31124	" "	No
	31129	" "	No
	31130	" "	No
	31225	" "	No
	31301	" "	No
	32502	" "	No
	32508	" "	No
	32509	" "	No
	32511	" "	No
	32514	" "	No
	32515	" "	No
	32516	" "	No
	32517	" "	No
	32527	" "	No
	32528	" "	No
	33917	" "	No
	34602	" "	No
	34603	" "	No
	34604	" "	No
	34606	" "	No
	34611	" "	No
	34612	" "	No

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Rosenman, Leonard (cont)	34614	TV Contract	No
	34616	" "	No
	34618	" "	No
	34623	" "	No
	34624	" "	No
	34634	" "	No
	83359	" "	No
	68-602 (02016)	Theatrical Contract	No
	69-1053 (83355)	TV Contract	No
Schifrin, Lalo	33707	" "	No
	33799	" "	No
	68-209 (02014)	Theatrical Contract	No
	68210 (02014)	N/a; publishing royalty contract	N/a
	68-859 (02020)	Theatrical Contract	No
	70-269 (02036)	" "	No
	70-497 (02039)	" "	No
	72-211 (02051)	" "	No
	72-515 (35904)	TV Contract	No
	73-157 (02058)	Theatrical Contract	No
Shuken, Leo	29920	TV Contract	No
	29965	" "	No
	31401	" "	No
	31405	" "	No
	31708	" "	No
	31712	" "	No
	31728	" "	No
	70-698 (02044)	Theatrical Contract	No

COMPOSER	FILE #	DIRECTION OF ACTIVITIES	DEMAND FOR COPYRIGHT
Steiner, Fred	30013	TV Contract	No
	30030	" "	No
	31318	" "	No
	33803	" "	No
	33805	" "	No
	33806	" "	No
	33808	" "	No
	33809	" "	No
	33812	" "	No
	33816	" "	No
	33818	No contract in file; unproduced	
	33826	TV Contract	No
	35117	" "	No
Tartaglia, John	32911	" "	No
	34128	" "	No
	34213	" "	No
	34215	" "	No
	34218	" "	No
	34219	" "	No
	34221	" "	No
	34222	" "	No
	34223	" "	No
	35302	" "	No
	35501	" "	No
	35506	" "	No
	35507	" "	No
	35508	" "	No

EXHIBIT F - LETTER AGREEMENT DATED JANUARY 20, 1953 - ANNEXED TO AFFIDAVIT OF HARRY GARFIELD

Universal City, California
January 20, 1953

Mr. Herman Stein
Universal Pictures Company, Inc.
Universal City, California

Dear Mr. Stein:

In connection with that certain contract of employment between you and us dated June 19, 1952, said contract of employment is hereby amended in the following respect only.

The following shall be deemed to be paragraph 19 of said agreement, and the same is hereby deemed to be included therein as paragraph 19 thereof:

"19. Notwithstanding anything herein contained to the contrary you expressly reserve to yourself, your heirs, executors, administrators and assigns the publication rights (other than reproduction rights in connection with motion pictures or television as herein granted to us) and such performing rights as are customarily controlled by ASCAP and/or its affiliated performance societies in and to all musical compositions and/or material composed and/or written by you hereunder. The "publication rights" herein reserved by you shall be deemed to include the right to publish sheet music, folios, orchestrations and/or any other printed form of publication as well as mechanical recordation rights (other than the right to record said musical compositions and/or material in connection with motion pictures and/or television as herein granted to us). You have advised us and you hereby represent and warrant that prior to the execution hereof you have entered into a commitment with a publishing concern known as Union Music Distributing Company and that the publication of musical compositions and/or material written by you hereunder is covered by the provisions thereof. You agree to pay to us and to direct said publishing company to pay to us sums not less than thirty-three and one-third per cent (33-1/3%) of all royalties payable by the publisher on account of the sale or other disposition by the publisher of orchestrations or sheet music publications of such musical compositions and/or material."

The following shall be deemed to be paragraph 20 of said agreement, and the same is hereby deemed to be included therein as paragraph 20 thereof:

km .4/53

EXHIBIT F - LETTER AGREEMENT DATED JANUARY 20, 1953 - ANNEXED TO AFFIDAVIT OF HARRY GARFIELD

"20. You expressly agree that we, our lessees, licensees and all other persons permitted by us to distribute, exhibit and/or exploit any photoplay in connection with which any musical compositions and/or material written,prepared or composed, in whole or in part, by you hereunder are used, shall have the free and unrestricted right to use any such musical compositions and/or material, and to make mechanical reproductions thereof to the extent and within the limitations herein provided, without the payment of any charge or royalty whatsoever, and in no event and under no circumstances shall you be permitted to participate in any rentals or other sums of money or royalties received by us, our lessees, licensees or any other persons permitted by us to use any such musical compositions and/or material, and/or any mechanical reproductions thereof, nor shall we be obligated to account to you for any rentals or other sums of money or royalties received by us or any other persons from the sale, use, licensing or other disposition, in connection with the exhibition, distribution, exploitation and/or advertising of any present or future kind of photoplays, of any musical compositions and/or material written, prepared or composed, in whole or in part, by you hereunder."

Except as herein expressly provided, said contract of employment is not hereby altered or amended in any respect whatsoever.

If the foregoing is in accordance with your understanding and agreement, will you kindly indicate your approval and acceptence thereof in the space hereinbelow provided.

Very truly yours,
UNIVERSAL PICTURES COMPANY, INC.

By s/ (illegible)
ASSISTANT SECRETARY

And s/ (illegible)
ASSISTANT TREASURER

APPROVED AND ACCEPTED:

s/ Herman Stein
(Herman Stein)

km 1/14/53

EXHIBIT G - LETTER AND AGREEMENT DATED JULY 1, 1958 - ANNEXED TO AFFIDAVIT OF HARRY GARFIELD

Universal Cit , California
July 1 , 1958

Universal Pictures Company, Inc.
Universal City, California

Dear Sirs:

Concurrently with the execution hereof, I have executed and delivered to you a Music Assignment of All Rights in and to all of the music composed by me necessary to the final completion of the underscore for the photoplay now entitled "THE PERFECT FURLOUGH," and which said music I have heretofore delivered to you.

I hereby acknowledge receipt from you of the gross amount of Eight Thousand Five Hundred Dollars ($8,500.00), less deductions and withholdings, and I hereby agree that such payment represents compensation in full for services rendered by me in connection with your employment of me to compose said music of the underscore for "THE PERFECT FURLOUGH," and for all rights granted by me to you under said Music Assignment of All Rights and under which said Assignment of course I have reserved publication rights as therein more fully defined.

Yours very truly,

(Frank Skinner)

EXHIBIT G - LETTER AND AGREEMENT DATED JULY 1, 1958 -
ANNEXED TO AFFIDAVIT OF HARRY GARFIELD

Pacific Coast Studios
Universal City, California

KNOW ALL MEN BY THESE PRESENTS:

1. That FRANK SKINNER ....., hereinafter referred to as the "undersigned," for and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration paid to the undersigned by UNIVERSAL PICTURES COMPANY, Inc., a Delaware corporation, hereinafter referred to as the "purchaser," the receipt of which is hereby acknowledged, has given, granted, bargained, sold, assigned, transferred, and set over, and does by these presents give, grant, bargain, sell, assign, transfer, and set over, forever, unto the purchaser, solely and exclusively, all rights of every kind and character whatsoever throughout the world in and to the music and lyrics written by the undersigned in connection with the musical composition now entitled

composed by me, necessary to the final completion of the underscore for the photoplay now entitled "THE PERFECT FURLOUGH"

as well as in and to all other work and/or the results thereof written, prepared, or suggested by the undersigned in connection with said musical composition. Said music, lyrics, and other work and/or the results thereof written, prepared or suggested by the undersigned are hereinafter sometimes referred to as the "work", and said musical composition, including lyrics, music, arrangement, and each and all of the other component parts of said musical composition, is sometimes hereinafter referred to as the "composition." The undersigned does further sell, assign, transfer, and set over unto the purchaser the complete and unencumbered title in and to said work, for all purposes whatsoever, without condition, restriction, or limitation of any kind; and does hereby assign, transfer, and set over unto the purchaser all of the undersigned's right, title and interest in and to said composition.

2. The undersigned does further give, grant, bargain, sell, assign, transfer, and set over, forever, to the purchaser the sole and unqualified right to use said work and/or said composition, in whole or in part, in whatever manner said purchaser may desire, including (but not limited to) the right to adapt, arrange, change, transpose, add to, and subtract from said work and/or composition or any part thereof, to such extent as the purchaser in its sole discretion may desire. The purchaser shall have the right, but not the obligation, to use the name of the undersigned in connection with said work and/or composition, or any part or parts thereof. The purchaser shall have the further right, but not the obligation, to use the title thereof in connection with said work and/or composition; and the purchaser may use in connection with said work and/or composition any other title or titles which it may select, and/or the purchaser shall have the right to use the title of said work and/or composition in connection with any musical literary, dramatic, or other works not based upon said work and/or composition.

3. The undersigned does further hereby give, grant, bargain, sell, assign, transfer, and set over, forever, to the purchaser the right to obtain copyright in all countries upon said work and/or composition, or any part thereof, together with all of the benefits of such copyright or copyrights and of all remedies held thereunder.

4. The undersigned hereby represents and warrants that he is the sole composer, author, and owner of said work; that the undersigned is the sole owner of all rights of any and all kinds whatsoever throughout the world therein and thereto; that there has been no publication thereof or of any part thereof with the knowledge or consent of the undersigned anywhere in the world; that the undersigned has the sole and exclusive right to dispose of each and every right herein granted and purported to be granted; that said work is not, nor is any part thereof, in the public domain but is validly copyrightable throughout the world as original work; that the undersigned has not in any way conveyed, granted, or hypothecated any rights of any kind or character in or to said work and/or composition, or any part thereof, to any person whomsoever other than the purchaser, nor has the undersigned granted any right, license or privilege with respect to any of the rights or property herein granted and/or purported to be granted to any person other than the purchaser; that there is at the date of these presents no litigation pending or threatened affecting the use of said work or composition and/or of the title thereof; that the title thereto is available for use in connection therewith or otherwise; that the undersigned has not done or caused or permitted to be done any act or thing by which any of the rights or property herein granted and/or purported to be granted to the purchaser has been in any way impaired; and that the undersigned will not at any time execute any further agreement or agreements in conflict herewith, nor will the undersigned in any way attempt to encumber the rights herein granted, nor will the undersigned do or cause or permit to be done any act or thing by which the rights or property herein granted and/or purported to be granted to the purchaser may in any way be impaired. The undersigned further represents and warrants that said work is original with the undersigned in all respects; that the same is not, nor is any part thereof, taken from or based upon any other musical, dramatic, or other work or in any way infringes upon the copyright or any other right of any individual, person, firm, or corporation; and that the use of said work by the purchaser in any form whatsoever will not in any way, directly or indirectly, infringe upon the rights of any individual, person, firm, or corporation whatsoever.

5. The undersigned hereby appoints the purchaser the true and lawful attorney of the undersigned, irrevocably, but for the sole benefit of the purchaser, to institute and prosecute such proceedings as the purchaser may deem expedient to protect the rights herein granted and/or purported to be granted, and/or to effect the recovery by the purchaser of damages and penalties for the infringement of said rights, and/or to secure to the purchaser the full benefit of all of the rights herein granted and purported to be granted, and to collect and receipt for all damages arising from any infringement of said rights, and any recovery, costs, and damages collected or received are hereby assigned to and shall belong to the purchaser. The purchaser may sue in its own name and/or may use the name of the undersigned and/or at its option may join the undersigned as party plaintiff or defendant in any suit or proceeding brought for such purpose or purposes.

6. The undersigned hereby guarantees and warrants that the undersigned will indemnify, make good, and hold harmless the purchaser of, from, and against any and all loss, damage, costs, charges, legal fees, recoveries, judgments, penalties, and expenses which may be obtained against, imposed upon, or suffered by the purchaser by reason of any infringement or violation or alleged infringement or violation of any copyright or any other right of any individual, person, firm, or corporation or by reason of or from any use which may be made of said work and/or composition by the purchaser, or by reason of the breach of any term, covenant, representation, or warranty herein contained, or by reason of anything whatsoever which might prejudice the securing to the purchaser of the full benefit of the rights herein granted and/or purported to be granted. The foregoing guarantees and warranties shall not apply to any change in said work and/or composition which may be made by the purchaser.

7. The undersigned hereby agrees to duly execute, acknowledge, and deliver, and/or to procure the due execution, acknowledgment, and delivery, to the purchaser of any and all further assignments and/or other instruments which in the sole judgment and discretion of the purchaser may be deemed necessary or expedient to carry out or effectuate the purposes or intent of this present instrument.

8. The undersigned expressly agrees to cause renewals of all copyrights of said work duly to be obtained, and all rights herein granted are hereby assigned to the purchaser for the renewal term and during any extension of copyright and after renewal or extension, and further and like documents of assignment will be given to the purchaser if requested. The undersigned hereby appoints the purchaser his true and lawful attorney, irrevocably, to apply, in his name, place and stead, for renewal of said copyright, and to execute to itself assignment or assignments thereof.

9. If the names of two or more persons appear hereinabove in paragraph 1 as the "undersigned," or if this instrument be executed by two or more persons, then and in that event this agreement shall be binding jointly and severally upon said persons, and each of them, and each and all of the representations, warranties, agreements, and obligations on the part of the undersigned, hereinabove set forth, shall be and be deemed to be the joint and several representations, warranties, agreements and obligations of said persons, and each of them; and the terms "undersigned" and "he" (where "he" refers to the undersigned) shall be deemed to include and apply to all persons who are described as the "undersigned"; and wherever the context so requires, the masculine gender shall include and apply to all genders, and the singular shall apply to and include, as well, the plural. The term "purchaser," as used herein, shall include the purchaser herein named and, as well, his successors and assigns. The purchaser may assign, transfer, and grant all or any part of the rights herein granted it to any individual, person, firm, or corporation, without limit, and shall enjoy its rights hereunder in perpetuity and forever, as long as any rights in said composition are recognized in law or in equity, except insofar as such period of perpetuity may be shortened due to any copyrighting by the purchaser of said work and/or composition, in which case the purchaser shall enjoy its rights of such copyright or copyrights, including any and all renewals thereof. 10-11-12 Dec Rider attached

IN WITNESS WHEREOF the undersigned has set his hand this 1st day of July, 1958

STATE OF CALIFORNIA, }
COUNTY OF LOS ANGELES. } ss.

Frank Skinner (Frank Skinner)

On this 1st day of July, 1958, before me,

a notary public in and for said county and state, residing therein, duly commissioned and sworn, personally appeared Frank Skinner, known to me to be the person whose name is (are) subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

and renewals and extensions of copyright

10. Notwithstanding anything herein contained, the undersigned expressly reserves to himself, his respective heirs, executors, administrators and assigns, the publication rights (other than reproduction rights in connection with any motion pictures and/or any public performance of said composition on the stage, radio, television, or any other form of public or private performances as herein granted to the purchaser) and such performing rights as are customarily controlled by ASCAP and/or its affiliated performance society in and to said musical composition written by the undersigned hereunder. The "publication rights" herein reserved by the undersigned shall be deemed to include the right to publish sheet music, folios, orchestrations and/or any other printed form of publication as well as mechanical recordation rights (other than the right to record said musical composition in connection with motion pictures, radio and/or television and/or public or private performances as herein granted to the purchaser). The undersigned has advised the purchaser and the undersigned hereby represents and warrants that prior to the execution hereof the undersigned has entered into a commitment with a publishing concern known as Northern Music Corporation and that the publication of said musical composition written by the undersigned hereunder is covered by the provisions thereof. The undersigned agrees to direct said publishing company to pay to the purchaser sums not less than Thirty-three and one-third per cent (33 1/3%) of all royalties payable by the publisher on account of the sale or other disposition by the publisher of orchestrations or sheet music publications of said musical composition exclusive of any amounts paid by said publishing company to the undersigned.

11. The undersigned expressly agrees that the purchaser, the purchaser's lessees, licensees and all other persons permitted by the purchaser shall have the free and unrestricted right to distribute, exhibit and/or exploit any photoplay in connection with which said musical composition is used, in whole or in part. on the stage, radio, television or any other form of public or private performances thereof, and shall have the free and unrestricted right to use said musical composition and to make mechanical reproductions thereof to the extent and within the limitations herein provided, without the payment of any charge or royalty whatsoever, and in no event and under no circumstances shall the undersigned be permitted to participate in any rentals or other sums of money or royalties received by the purchaser, the purchaser's lessees, licensees or any other persons permitted by the purchaser to use said musical composition, and/or mechanical reproductions thereof, nor shall the purchaser be obligated to account to the undersigned for any rentals or other sums of money or royalties received by the purchaser or any other persons from the sale, use, licensing or other disposition of said musical composition, in whole or in part, in connection with the exhibition, distribution, exploitation and/or advertising of any present or future kind of photoplays, or any of the foregoing public or private performances.

12. The undersigned agrees to preserve said composition from coming into the public domain insofar as may be legally possible, to cause to be affixed to each copy of said composition or any part thereof published, mechanically recorded, or offered for sale, any notice designating the purchaser or its designee as the copyright proprietor necessary for protection in the United States or necessary for like protection under the laws of other countries; duly to register said work in the name of the purchaser or the name of its designee wherever its protection so requires; and to contract for the benefit of the purchaser for the above protection in all assignments, licenses or agreements of any kind of or concerning the publication and/or mechanical recordation of said composition hereafter made to or with others.

**EXHIBIT H - LETTER DATED APRIL 27, 1960 -
ANNEXED TO AFFIDAVIT OF HARRY GARFIELD**

REVUE STUDIOS
Universal City, California

April 27, 1960

Mr. David Rakson
12017 Pacoima Court
Studio City, California

RE: "ABSALOM, MY SON" (#13108)

Dear Mr. Raksin:

Please refer to that certain agreement dated September 29, 1959, whereby we employed you to compose music and write lyrics for and in connection with our photoplay entitled "ABSALOM, MY SON" (#13108). During and under said employment, you wrote and composed the following four compositions:

1. "Lament: O Absalom, My Son"
2. "Out of The Depths"
3. "Psalm On The Eve Of Battle"
4. "How Beautiful Upon The Mountain"

We hereby quitclaim to you, without making any warranty express or implied, whatsoever, all our right, title and interest in the compostiion entitled "Lament: O Absalom, My Son."

We hereby quitclaim to you, without making any warranty express or implied, whatsoever, all our right, title and interest in the compositions numbered 2, 3 and 4, excepting those rights as herein after set forth and hereby reserved to us, our successors, assigns and licensees:

1. The right to continue to exhibit said film or any part thereof containing the compositions numbered 2, 3 and 4, in perpetuity throughout the world.

2. The exclusive right in perpetuity and throughout the world to synchronize the compositions numbered 2, 3 and 4 in timed relation with any film or films (including tape or any other device) now in existence or hereinafter produced.

3. The right to the publisher's performance royalties for the compositions numbered 2, 3 and 4 in connection with the film(s) mentioned in Paragraphs 1 and 2 hereof.

Please acknowledge your acceptance of this quitclaim by signing in the space hereinbelow provided.

Very truly yours,
REVUE STUDIOS

By s/ (illegible)

ACCEPTED AND RECEIVED:

s/ David Raksin
DAVID RAKSIN

AFFIDAVIT OF WILLIAM STINSON
IN OPPOSITION TO PLAINTIFFS' MOTION

(Reproduced herein at pages 425a through 432a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al.,	:	AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND A PRELIMINARY INJUNCTION
Plaintiffs,	:	
-against-	:	
UNIVERSAL PICTURES, INC., et al.,	:	72 Civ. 542 S.J.R.
Defendants.	:	

STATE OF CALIFORNIA)
: ss.:
COUNTY OF LOS ANGELES)

WILLIAM STINSON, being duly sworn, deposes and says:

1. I am the Vice President for Music for Paramount Pictures Corporation ("Paramount"), a subsidiary of Gulf & Western Industries, Inc. ("G&W"), two of the defendants in the above-entitled proceeding and am familiar with the matters hereinafter set forth. I respectfully submit this affidavit in opposition to plaintiffs' motion for summary judgment dismissing the Fifth and Sixth Affirmative Defenses set forth in Paramount's and G&W's answer to the complaint, and for preliminary injunctive relief.

2. During my 33 years of employment with Paramount, I have employed, supervised and generally dealt with composers and lyricists, directly or indirectly, in connection with the composition of music or lyrics for theatrical and television films. Between August, 1967 and March, 1970, I served as Executive Vice President and

General Manager of Famous Music Corporation, a music publishing company which is also a subsidiary of G&W. While at Famous Music Corporation, I continued to work with composers and lyricists, particularly with respect to the publishing and exploitation of their compositions.

3. I respectfully submit that the several affidavits submitted in support of plaintiffs' motion are quite misleading by virtue of their incompleteness and inaccurate characterizations of services rendered by composers and lyricists. More specifically:

(a) plaintiffs wholly ignore the years of collective bargaining negotiations with their union -- the Composers and Lyricists Guild of America (CLGA) -- with respect to their compensation, credits, performance and publication rights and other terms and conditions of employment;

(b) plaintiffs and their counsel, Mr. Marcus, wholly ignore the fact that the individual employment agreements with composers and lyricists were specifically made subject to the provisions of the Minimum Basic Agreements at plaintiffs' request;

(c) plaintiffs, in the generalized descriptions of their employment and duties, fail to adequately distinguish between the performance of their services for theatrical and television films; and

(d) plaintiffs incorrectly describe, at least with respect to Paramount, the supervision and control exercised over them, the office space and facilities made available to them, and most importantly, the benefits they receive as employees of Paramount.

4. I have been advised that Mr. Charles Boren, former Executive Vice President of the Association of Motion Picture and Television Producers, Inc. ("AMPTP") is submitting an affidavit explaining the history and scope of the collective bargaining negotiations with plaintiffs'

union. Accordingly, I will not tax this Court with a cumulative description of this issue.

5. Nevertheless, I would like to state to the best of my knowledge, information and belief that neither Paramount nor C&W has ever combined, conspired or agreed with any party to unlawfully impose standard terms of employment upon any group or category of employees. Paramount has agreed, in collective bargaining with the CLGA (the certified bargaining agent for composers and lyricists), and with similar unions to provide minimum wages, hours and other terms and conditions of employment to its employees covered by these labor agreements.

6. In fact, plaintiffs' counsel, Abraham Marcus, Esq., requested a clause in each individual employment agreement, subjecting said agreements to the CLGA Minimum Basic Agreements. Specifically, Mr. Marcus stated in his letter, dated August 23, 1961, to a former employee of Paramount, Miss Gertrude Rosenstein:

> "There is another provision which we would like to see included in every contract for composers and that is one to the effect that the Producer-Composers and Lyricists Guild of America Minimum Basic Agreement of 1960 be specifically declared to control over any provision to the contrary appearing in the individual contract. Rather than suggest to you a specific clause, I am writing to Al Chamie requesting his approval of a clause for all producers."

I am annexing hereto a copy of Mr. Marcus' letter as Exhibit "A."

7. The plaintiffs in this proceeding are composers and lyricists who are employed to create musical scores or compositions to be utilized in theatrical or television films. The selection of a particular composer or lyricist for a film often depends on the individual's particular talents and his availability in terms of time

in respect to the type of film being produced. The individual (as opposed to the producing company) who is described as the "producer" of a motion picture frequently has a great deal to say about the selection of the composer to be employed. Once an individual is selected, I then endeavor to obtain his services as a direct employee or on loan from another company for whom he may be employed. Generally, I telephone the composer or his agent to determine his availability and interest in the production. On many occasions before any agreement is signed, the composer will view the film so that he understands the nature of the employment which is being offered to him. If the proposed employment is acceptable to him, a "deal memo" (summary form of agreement) will be prepared and executed. The composer will thereafter undertake the creation of an acceptable "theme."

8. The deal memo varies in form depending on whether the relationship is one of direct employment or of a loan out. A sample form of direct employment deal memo is annexed as Exhibit "B." The execution of the deal memo is occasionally followed by the execution of a formal agreement, a sample copy of which is annexed hereto as Exhibit "C." Pursuant to the provisions of these employment agreements, Paramount reserves the right to require changes, revisions or additions to unsatisfactory compositions. Specifically, the agreement states:

> "Should any such musical material delivered by the Employees not be satisfactory to the Employer, the Employees shall, at the request of the Employer, make such changes, revisions and additions as may be required by the Employer or to write, compose and prepare new musical material in accordance with the directions of the Employer and to deliver

such changes, revisions and additions of such new musical material upon such date as the Employer may then specify. . . . No submission or purported delivery to the Employer of such musical material shall be deemed an actual delivery hereunder unless and until such musical material shall fully comply with the foregoing provisions. Should the Employees fail for any reason whatever to complete and deliver said musical material as and within the time herein provided, the Employer may, at its election, either (a) terminate and cancel this agreement, in which event the Employer shall have no further obligation and shall be released from all of its obligations to the Employees hereunder, or (b) specify a new date on or before which the Employees shall complete and deliver said musical material to the Employer."

The above-described deal memo usually constitutes the only written agreement with our composer-employees, incorporating the customary provisions of the formal agreement by reference. (See Paragraph 10 of Exhibit "B").

9. During this early period of employment, the composer will occasionally return with one or more proposed musical "themes" for the film which he will perform or demonstrate for myself, the producer and/or the executive vice-president of the studio. From time to time, such proposed themes have been rejected at their presentation, or have not been used in the particular film. On one occasion, I recall Elmer Bernstein, a plaintiff in this proceeding, presenting to me three alternative themes, only one of which was accepted for the film then in production. To the best of my recollection, that occasion was in connection with the Hal Wallis production of the film "TAMIKO."

10. Once a theme is accepted, the composer then views the film with the individual producer and various other individuals, such as the director, music editor and, on occasion, the head of the music department, to select

those portions of the film where music or lyrics will be required. The composer does participate with others in a group effort. Thereafter, the composer will undertake to create the particular musical score to be utilized in each selected segment of the film. The music is then orchestrated and recorded with the film but may and often is thereafter cut or altered by the music film editor. This right is specifically reserved by Paramount in its employment agreements.

11. The degree of variance from the foregoing description of the composer's employment depends on whether the production is a theatrical or television film. For example, it takes about eight or nine days to complete the post-production services for a television film to be completed and ready for exhibition; whereas a theatrical film takes between six to ten weeks for the post-production services to be completed. I have underscored this distinction because of the generalized statements set forth in plaintiffs' supporting affidavits with respect to the time burdens imposed upon them.

12. To the best of my knowledge, information and belief, Paramount has never refused to furnish a composer or lyricist with office space or technical assistance in connection with the performance of his duties. In fact, many composers and lyricists, including affiant David Raskin, have been furnished office space, telephone, pianos and numerous other services at our facilities. Several composers and lyricists have even been permitted to borrow movieolas for their personal use; however, they may not operate such equipment in connection with their employment since the operation of such equipment is governed by the provisions of a collective bargaining agreement which Paramount entered with the film editors' union.

13. The assertion by Mr. Fred Karlin in his affidavit in support of plaintiffs' motion that he has never been employed directly by one of the defendant companies but rather has been loaned by his own corporation is not true. Attached as Exhibit "B" is a "deal memo agreement" with Mr. Karlin engaging his services as an employee in connection with the production "THE STERILE CUCKOO." A formal employment agreement was not subsequently executed. I am also attaching as Exhibit "E" Mr. Karlin's sworn certification, dated May 26, 1969, that he composed certain identified compositions "as an employee of Paramount Pictures Corporation."

14. These composers, as employees of Paramount, complete the requisite W-4 forms for income tax and social security purposes. Moreover, when a composer or lyricist is lent to Paramount by another corporation, Paramount frequently reimburses the lending corporation (over and above the composer's salary) the required employer's contribution for social security, health, welfare and pension benefits on the theory that Paramount would have been required to pay such sums had the composer been retained as a direct employee.

15. In light of the foregoing facts, I respectfully submit that there are numerous material facts in dispute which warrant a denial of plaintiffs' motion for summary judgment. I further submit that the preliminary injunctive relief requested by plaintiffs should be denied. The granting of such preliminary relief would amount to a granting of the ultimate relief sought by plaintiffs --

relief which should be discussed by the parties in collective bargaining.

WHEREFORE, deponent prays that this Court enter an order denying plaintiffs' motion for summary judgment and for preliminary injunctive relief.

William Stinson

Sworn to before me this
19th day of November, 1973.

Notary Public

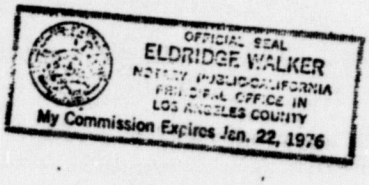

EXHIBIT A - LETTER DATED AUGUST 23, 1961 - ANNEXED TO AFFIDAVIT OF WILLIAM STINSON

Gertrude Rosenstein

AUG 24 1961

LAW OFFICE
ABRAHAM MARCUS
9250 WILSHIRE BOULEVARD
BEVERLY HILLS
CALIFORNIA
CRestview 6-3123

CABLE: MARCZIS
ABRAHAM MAT

NEW YORK OFFICE
ZISSU, MARCUS & STEIN
292 MADISON AVENUE

August 23, 1961

Miss Gertrude Rosenstein
Paramount Pictures Corp.
5451 Marathon
Los Angeles, California

Dear Gertrude:

Re: Leith Stevens - DEADLOCK

Leith Stevens has drawn my attention to a provision of the contract which you sent me for his signature which is extremely unfair to him. We refer to paragraph FIRST (b) at page 2, which requires the employee to attend, contribute to and cooperate in conferences and discussions with the producer and director and to attend sessions on the dubbing stage, and that the time during which he is so rendering the services shall not be computed as part of the term of employment nor that the employee shall be entitled to any compensation with respect to the services whether they occur before, during or after the expiration of the term.

Under this provision the employee could be required to render services for one month, two months, three years or any length of time without additional compensation. It also seems to be in conflict with paragraph FOURTH (a) 2 which provides for payment for services rendered by the employee after the expiration of the eight weeks.

There is another provision which we would like to see included in every contract for composers and that is one to the effect that the Producer-Composers and Lyricists Guild of America Minimum Basic Agreement of 1960 be specifically declared to control over any provision to the contrary appearing in the individual contract. Rather than suggest to you a specific clause, I am writing to Al Chamie requesting his approval of a clause for all producers.

May I hear from you.

Sincerely,

ABRAHAM MARCUS

cc: Mr. Stevens

EXHIBIT B - PARAMOUNT MEMORANDUM DATED JANUARY 15, 1968 - ANNEXED TO AFFIDAVIT OF WILLIAM STINSON

PARAMOUNT PICTURES CORPORATION
West Coast Studios

INTER-OFFICE COMMUNICATION

TO: MR. EUGENE H. FRANK — DATE: JANUARY 15, 1969

FROM: JOHN C. HAMMELL — RE: FRED KARLIN - "THE STERILE CUCKOO"

We have employed FRED KARLIN to compose, arrange and conduct all the necessary music for the Boardwalk Productions' motion picture entitled THE STERILE CUCKOO upon the following terms and conditions:

1. Mr. Karlin will render his services during an unlimited period, commencing on Friday, January 17, 1969. His services will be exclusive for the period of ten weeks and non-exclusive thereafter, but we are to have first call.

2. For all of his services, we agree to pay Mr. Karlin the total compensation of $15,000, payable as follows:

   a. $2,500 upon execution of this Deal Memorandum of Agreement;

   b. $1,000 per week during ten consecutive weeks commencing with the starting date; and

   c. $2,500 not later than one week after we notify him that his services are no longer required.

3. If Mr. Karlin does any orchestration on this picture, he is to receive in addition payment at AFM scale, and Paramount will give him the option of doing the orchestration himself or of selecting another orchestrator, who will be separately paid by us.

4. Paramount agrees to reimburse Mr. Karlin for one first-class, round-trip air ticket from New York to Los Angeles, for which he has already paid himself. Paramount will also pay as living expenses for Mr. Karlin the total sum of $2,500, as follows:

   a. $1,250 to be paid on signature of this contract.

   b. $1,250 upon Mr. Karlin's arrival in Los Angeles to conduct the music for the motion picture.

EXHIBIT B - PARAMOUNT MEMORANDUM DATED JANUARY 15, 1969 - ANNEXED TO AFFIDAVIT OF WILLIAM STINSON

5. If Mr. Karlin completes his services and is not in default and the motion picture, as released in the United States, contains the music score composed by Mr. Karlin:

   a. We agree to give him screen credit on a separate card of the film, reading substantially as follows:

      Music by FRED KARLIN

      provided that all music contained in the motion picture as released is composed by Mr. Karlin; or provided that the major part of the music contained in the motion picture is composed by him and that any other music in the picture not composed by Mr. Karlin receives screen credit.

   b. Paid advertising will be at Paramount's option.

6. (a) Should the music sound track of the production be reused as a commercial record album, produced and distributed by any record company of Paramount's choice, Paramount agrees to include in any agreement with that record company a provision obligating the record company to pay Mr. Karlin a proportionate share of the customary 5% of 90% of the suggested retail selling price as artist's royalty in connection with the sale of such album in the United States and with the customary reduction in royalty with respect to foreign distribution of such album and for distribution through record clubs and for distribution of budge line albums, reel-to-reel tapes and tape cartridges. Mr. Karli agrees that the usual artist's royalty payable to Mr. Karlin is subject to Mr. Karlin's bearing his proportionate share of musi production costs for such album and to the recoupment by the record company of Mr. Karlin's proportionate share of such cost.

   (b) If it should be decided not to use sound track for such album but to rerecord a "live" commercial record album of the music score, to be recorded and distributed by any record company of Paramount's choice, Mr. Karlin agrees to make himself available to prepare, adapt, arrange and rearrange said music score, and to compose and arrange any additional musical material, all as may be required, and to conduct all such music for such "live" album, provided that Paramount makes the same arrangement as above with respect to artist's royalty in connection with this album. All additional musical material shall be governed by the provisions of this employment agreement and shall be the property of Paramount at no additional compensation.

EXHIBIT B - PARAMOUNT MEMORANDUM DATED JANUARY 15, 1969 - ANNEXED TO AFFIDAVIT OF WILLIAM STINSON

7. Mr. Karlin is a member of ASCAP and CLGA.

8. Mr. Karlin's social security number is 349-30-8152.

9. Mr. Karlin warrants that he is free to enter into this agreement and to grant all rights herein granted.

10. It is contemplated that a more formal agreement will be executed by the parties embodying all of the foregoing terms and such other provisions as are customarily contained in Paramount's customary form; however, this memorandum shall constitute a binding agreement between the parties until such time as the formal agreement is executed or if no formal agreement is executed.

11. This agreement was reached between John Hammell, representing Paramount, and Mr. Joe Rivkin, representing Mr. Karlin. Mr. Rivkin's address is in care of the William Morris Agency, 151 El Camino Drive, Beverly Hills, California. Telephone: 274-7451.

John C. Hammell
Music Director
for
Paramount Pictures Corporation

APPROVED:

By:
Arthur N. Ryan
Assistant Secretary

ACCEPTED:

Fred Karlin

JCH:pm

EXHIBIT C - AGREEMENT DATED SEPTEMBER 23, 1965 -
ANNEXED TO AFFIDAVIT OF WILLIAM STINSON

(Reproduced herein at pages 438a through 452a)

10/11/65 GR:meb AGREEMENT made this 23rd day of September, 1965, between PARAMOUNT PICTURES CORPORATION, a New York corporation, hereinafter referred to as the EMPLOYER, and JAY LIVINGSTON and RAY EVANS, hereinafter collectively referred to as the EMPLOYEES.

FIRST: (a) The Employer hereby employs the Employees, and the Employees hereby agree to enter into the employ of the Employer, to render those services hereinafter enumerated in connection with the motion picture photoplay tentatively entitled THE NIGHT OF THE GRIZZLY (hereinafter referred to as "the Photoplay"), at the studios of the Employer in Los Angeles, California, and at such other studios and places and on such locations as the Employer may from time to time designate, during the period commencing on the date hereof, and continuing until the completion and delivery to the Employer of one (1) song, as provided in Subdivision (b) of Paragraph SECOND hereof, upon the terms, covenants and conditions hereinafter provided.

(b) The Employees hereby agree to render and perform their services, as and when required by the Employer, in writing, composing, arranging and preparing the music and the lyric of said one (1) song, (hereinafter referred to as "said musical material") suitable for use as a featured song therefor, as may be required and accepted by the Employer.

SECOND: The Employees, jointly and severally:

(a) Hereby accept said employment and agree to give so much of their time and attention and best talents and abilities to the service of the Employer and /or such other person, firm or corporation as the Employer may designate, as, when and where the Employer may require and in accordance with the directions of the Employer during the existence of this agreement. The Employer agrees that the Employees shall have the right, provided they shall not be in default hereunder, to render their services during the period hereof, for their own account and for persons, firms or corporations other than those referred to in the preceding sentence, on condition that the Employer shall have first and prior right to the Employees' services and any services which the Employees may render to any such other persons, firms or corporations shall not interfere with the full and timely performance of their services to the Employer hereunder. The Employees, jointly and severally, agree that they will not, during the term hereof, render their services to any person, firm or corporation other than the Employer, except as specifically provided in this agreement.

(b) Hereby agree to proceed diligently and expeditiously with the writing, composing, arranging and preparing of said musical

material and to complete and deliver said musical material to the Employer as and when required by the Employer. The Employees, jointly and severally, further agree that said musical material required by the Employer hereunder shall be full and complete and shall embody and conform to the recommendations, suggestions and directions given from time to time by the Employer to the Employees. Should any such musical material delivered by the Employees not be satisfactory to the Employer, the Employees shall, at the request of the Employer, make such changes, revisions and additions as may be required by the Employer or to write, compose and prepare new musical material in accordance with the directions of the Employer and to deliver such changes, revisions and additions of such new musical material upon such date as the Employer may then specify. Should such changes, revisions or additions or such new musical material again not be satisfactory to the Employer, the Employees shall, at the request of the Employer, make such further changes, revisions and additions or to write and compose new musical material, in accordance with the directions of the Employer, until it shall be satisfactory to the Employer, and to deliver such changes, revisions and additions or such new musical material upon such new date as the Employer may then specify. No submission or purported delivery to the Employer of such musical material shall be deemed an actual delivery hereunder unless and until such musical material shall fully comply with the foregoing provisions. Should the Employees fail for any reason whatever to complete and deliver said musical

material as and within the time herein provided, the Employer may, at its election, either (a) terminate and cancel this agreement, in which event the Employer shall have no further obligation and shall be released from all of its obligations to the Employees hereunder, or (b) specify a new date on or before which the Employees shall complete and deliver said musical material to the Employer. Should the Employees fail for any reason whatever to complete and deliver said musical material on or before such new date, or to complete and deliver any revisions requested, the Employer shall again have the same election as hereinabove provided and may repeat such election either until the Employer shall have elected to terminate and cancel this agreement as aforesaid or until the Employees shall have completed and delivered to the Employer said musical material or revisions thereof, as the case may be.

THIRD: In full consideration for the Employees' services to be rendered pursuant hereto and for the rights herein granted, and in complete discharge of the Employer's obligations hereunder, and provided that the Employees shall have completed their services hereunder and shall not be in default hereunder, the Employer hereby agrees to pay to the Employees, and the Employees agree to accept, the sum of Two Thousand Five Hundred Dollars ($2,500.), payable one-half (1/2) thereof to Jay Livingston and one-half (1/2) thereof to Ray Evans, not later than one (1) week after the Employer shall notify the Employees that said song has been accepted.

It is agreed that the failure of the Employer actually *** the services of the Employees in connection with said musical material or the failure of the Employer actually to *** all or any part of said musical material which the Employees may write and compose hereunder shall not be deemed breach of this agreement by the Employer; provided, however, that, if the Employees shall have fully and faithfully complies with and performed all the terms, covenants and conditions on their part to be performed hereunder, such failure shall not relieve the Employer of its obligation to pay the Employees the compensation specified in this Paragraph THIRD, subject, however, to any other provisions of this agreement relieving the Employer of its obligations to pay compensation hereunder.

FOURTH: The Employees, jointly and severally, hereby grant to the Employer the right to use and simulate their names, photographs and likenesses in and in connection with the Employer's motion picture photoplays and in advertising, exploiting and exhibiting the same. The Employees, jointly and severally, further agree that, during the period of their employment by the Employer hereunder, they will not issue or cause to be issued, or authoriz the issuance of, any publicity or advertising of any nature whatsoever relating to this agreement or the Employees' services for the Employer. Any publicity concerning this agreement or the services of the Employees to be rendered hereunder shall and may be issued solely by the Employer and/or any persons, firms or corporations subsidiary to, affiliated with,

*** (illegible)

10/11/65 associated with, successor to or served by the Employer as the Employer may from time to time designate and authorize; and the Employees, jointly and severally, hereby grant to the Employer and to any persons, firms or corporations desgnated by the Employer as aforesaid, the right to use and simulate the Employees' names, photographs and likenesses in connection with any material created and composed by them hereunder and any and all uses thereof and in publicity and advertising in connection therewith and with their services for the Employer. Nothing contained in this Paragraph FOURTH shall be construed to prevent the use or simulation of the Employees' names, photographs or likenesses in connection with any material created and composed by them for others than the Employer or any persons, firms or corporations designated by the Employer as aforesaid.

FIFTH: The Employees, jointly and severally, hereby warrant and guarantee that any and all literary and musical material written or composed by the Employees pursuant hereto shall be wholly original with them and shall not be copied in whole or in part from or based upon or adapted from any other work and shall automatically and forever and throughout the world become the property of the Employer which shall be the author thereof, and as such author the Employer shall have, throughout the world, the sole and exclusive rights, among other things, to use, adapt and change said material and the title thereof and to use and license the use of said title for and in connection with or in

any manner or form whatsoever apart from said material, and to make any arrangements, adaptations, translations or versions of said material, and to combine said material with any other work or works, and to publish or license the publication, and to use and license the use by mechanical or electrical means, and to record, reproduce and transmit, and to perform, said material and all arrangements, adaptations, translations, bersions or combinations thereof, with or in any manner or form whatsoever apart from said title, all in and in connection with the exhibition, reproduction and transmission of motion picture photoplays and for any other theatrical, artistic, commercial or other purposes, and to make, use, license and vend any and all records or devices required or desired for any such purposes. The Employees, jointly and severally, agree to execute, verify, acknowledge and deliver any and all papers which the Employer shall deem necessary or advisable to evidence, establish, maintain, protect, enforce or defend the rights of the Employer with respect to the aforesaid material, including a certificate similar in form to the following:

> The undersigned, JAY LIVINGSTON and RAY EVANS, hereby certify that they wrote and composed (or collaborated in the writing and composing of) the original numbers, parts and arrangements entitled:
>
> as employees of PARAMOUNT PICTURES CORPORATION (hereinafter referred to as the "Employer"), pursuant to agreement dated the 23rd day of September, 1965, in the performance of their duties

thereunder and in the regular course of their employment, and that the Employer is the author thereof and entitled to the copyright therein forever and throughout the world, with the right to make such changes therein and such uses thereof as the Employer may determine as author.

The undersigned hereby further certify that the work composed by them was not copied or adapted from any other work, except as indicated thereon.

SIXTH: Nothing herein contained shall be construed to obligate the Employer to incorporate any of the musical material written by the Employees pursuant hereto in the Photoplay, or in any other motion picture photoplay, and nothing herein contained shall be contrued to prevent the Employer from interpolating in the Photoplay, or in any other motion picture photoplay in which any of such musical material shall be used, any songs, musical compositions or any musical material written or composed by a person or persons other than the Employees.

SEVENTH: The Employer may terminate this agreement if the Employee should at any time fail, be unable, neglect or refuse to perform the services herein specified at the times and in the manner herein provided, or if the Employees should fail, be unable, neglect or refuse to perform or observe any of the Employees' obligations hereunder at the times and in the manner herein provided, or if the Employees should in any other manner breach this agreement; but in the event the failure of the Employees to perform the Employees; services hereunder shall be

due to illness, injury or accident, the Employer may terminate this agreement only if such illness, injury or accident shall continue for seven (7) consecutive days or for an aggregate of ten (10) days. The provisions of the Paragraph SEVENTH are in addition to and not exclusive of or in limitation of any other rights and remedies of the Employer under this agreement or at law or in equity.

EIGHTH: Should the Employer be hampered, interrupted or interfered with in the normal conduct of the Employer's business of producing motion pictures by reason of epidemic, fire, action of the elements, strikes, lockouts, labor disputes, Governmental order, court order, or order of any other legally constituted authority, the act of God or a public enemy, war, riots, civil commotion, or other causes beyond the Employer's control, whether of the same or of any other nature, or if for any reason whatsoever the majority of the motion picture theatres in the United States of America shall be closed for a week or any period in excess of a week, and as a result thereof the production of motion pictures in the studios of the Employer shall be suspended, or the commencement of the production thereof postponed, or if because of the illness or incapacity of the director or any principal member of the cast, the production of the Photoplay shall be suspended or the commencement of the production thereof postponed, then the Employer shall not be required to pay the Employees any compensation during the period of any such interruption or interference, and a period of time equal to all or any part of the period of such interruption or interference may, at the election of the Employer,

be added to the period of this agreement and in such event any payment to be made to the Employees hereunder may, at the election of the Employer, be postponed for a like period. Upon the resumption of production by the Employer, the Employees shall report to the Employer ready, able and willing to resume the performance of their services hereunder until the completion thereof, as aforesaid. If any such interruption or interference shall continue beyond six (6) weeks, the Employees or the Employer shall be free to terminate this agreement unless the Employer shall then be willing to resume payment of compensation hereunder.

NINTH: The Employee, jointly and severally, agree to indemnify and save harmless Employer, its parent, subsidiary, affiliated and associated corporations, and its and their successors, assigns, and licensees, against all damages, settlements, losses, expenses and costs, including reasonable counsel fees, suffered, made, incurred or assumed by the Employer, and its parent, subsidiary, affiliated and associated corporations and its and their successors assigns and licensees, in its and their discretion and without obtaining any consent therefor or in connection therewith, as a result of or by reason of a breach of any undertaking, representation, warranty, certification or agreement made or entered into herein or hereunder by the Employees.

TENTH: (a) If the Photoplay, in the form in which it shall be generally released in the United States of America, shall contain one (1) substantial vocal use of said song, the Employer shall

announce the names of the Employees on one-half (1/2) of a card or frame of the titles of the film of the Photoplay, and no other announcements shall be made on said one-half (1/2) card or frame.

(b) No casual or inadvertent failure to comply with the provisions of this Paragraph TENTH shall be deemed a breach of this agreement by the Employer.

ELEVENTH: With respect to each payment to be made by the Employer to the Employees hereunder, it is expressly understood and agreed that should the Employer for any reason whatever fail to make such payment as herein provided, then the Employer shall not be deemed in default hereunder unless and until following such failure the Employees shall have given the Employer written notice demanding such payment and the Employer shall have failed to make such payment within one (1) week after the Employer's receipt of said notice. In any event the Employer's liability for any such default and the Employees' rights and remedies therefor shall be limited to the recovery of money only, not exceeding the amount of such payment, and in no event shall any of the rights acquired or to be acquired by the Employer hereunder be affected or impaired.

TWELFTH: The provisions of the Producer-Composers and Lyricists Guild of America Minimum Basic Agreement of 1965, including but not limited to the provisions of Article 13 thereof with respect to Royalties and Article 21 thereof with respect to Rights Arising From Composition, apply to and are incorporated by reference into

this agreement, except that the amount provided for in Subdivision (a) of Article 21 shall be Six Cents (6¢) instead of Five Cents (5¢).

THIRTEENTH: The Employees, each for himself, hereby warrant that they are members of the American Society of Composers, Authors and Publishers (hereinafter referred to as "ASCAP"), and it is agreed that the performing rights of the Employer in and to said musical material hereunder are subject to such so-called "small performing rights" as ASCAP may now have or may hereafter have, only during the period in which such rights may subsist in ASCAP.

FOURTEENTH: The Employees, each for himself, agree that the Employees are now (or if not then forthwith upon the execution hereof the Employees will become) members in good standing of Composers and Lyricists Guild of America and that, during the entire term of this agreemnt during such period or periods as it may be lawful for the Employer to require the Employees so to do, the Employees will remain or become and remain members in good standing of the properly designated labor organization or organizations (as defined and determined under the applicable law) representing persons performing services of the type and character that are required to be performed by the Employees hereunder.

FIFTEENTH: Any notice or matter required or desired to be given to the Employees or to the Employer pursuant to this agreement shall be given by mailing the same in a postpaid wrapper, or telegraphing the same, addressed to the Employer at 5451 Marathon Street, Hollywood, California 90038, and addressed to the Employees in care of the agent, Henry Alper,

909 South Beverly Drive, Beverly Hills, California or to such other address as the Employees may hereafter designate in writing, and shall be sufficiently given by personal delivery thereof to the Employer or to the Employees or to their agent. The date of the mailing or telegraphing of such notice or the personal delivery thereof shall be the date of the giving of such notice. Any statements and checks for sums, if any, accruing to the Employers pursuant to Paragraph EIGHTH of this agreement shall be sufficiently transmitted by personal delivery thereof or sufficiently sent by mailing the same in

* * *

SIXTEENTH: It is mutually understood and agreed that the services of the Employees are special, unique, unusual, extraordinary and of an intellectual character, giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, and that, in the event of such breach by the Employees, the Employer shall be entitled to equitable relief by way of injunction or otherwise.

SEVENTEENTH: The Employees, jointly and severally, warrant that they are free to enter into this agreement and to render the services hereinbefore described, pursuant hereto.

* * (illegible)

EIGHTEENTH: This agreement, at the elction of the Employer, shall also enure to the benefit of the successors, assigns and grantees of the Employer, as Tenants in Common and each individually, and the parent, associated, affiliated and subsidiary companies of the Employer, as Tenants in Common and each individually. The Employees, jointly and severally, agree that the Employer, as Tenants in Common and each individually, may freely assign this agreement and grant its rights hereunder in whole or in part to any person, firm or corporation.

NINETEENTH: If the compensation payable during the term hereof shall exceed the amount permitted by any present or future law or Governmental order or regulation, such stated compensation shall be reduced while such limitation is in effect to the amount which is so permitted; and the payment of such reduced compensation shall be deemed to constitute full performance by the Employer of its obligations hereunder with respect to compensation for such period.

TWENTIETH: Nothing contained in this agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this agreement and any material statute, law, ordinance, regulation or order, contrary to which the parties hereto have no legal right to contract, the latter shall prevail,

but in such event any provisions of this agreement so affected shall be curtailed and limited only to the extent necessary to bring it within the legal requirements.

TWENTY-FIRST: The Employees hereby appoint and authorize Motion Picture Relief Fund, Inc., as the Employees' attorney-in-fact, to collect an amount equal to one-half per cent (1/2%) of all compensation now or hereafter due or payable to the Employees from the Employer. This power of attorney shall remain in effect until written notice of the revocation hereof is served by the Employees upon the Employer.

TWENTY-SECOND: All the warranties, covenants and agreements herein made by the Employees and all the terms and conditions hereof shall be binding upon the Employees jointly and severally.

IN WITNESS WHEREOF, the parties hereto have duly executed these presents the day and year first above written.

PARAMOUNT PICTURES CORPORATION

By s/ Arnold D. (illegible)
s/ AK Assistant Secretary

s/ Jay Livingston
Jay Livingston

s/ Ray Evans
Ray Evans

EXHIBIT D - CERTIFICATION BY FRED KARLIN, DATED MAY 26, 1969 - ANNEXED TO AFFIDAVIT OF WILLIAM STINSON

, the undersigned, hereby certify that I composed (or collaborated in the writing of) the following original numbers, parts and arrangements:

Sequence	Composition, arrangement & orchestration of:
1M1, 1M1A	MAIN TITLE consisting of COME SATURDAY MORNING - Lyric, Dory Previn
1M2	POOKIE
1M3-2M1	JERRY AND POOKIE #1
2M1A	JERRY PAYNE consisting of COME SATURDAY MORNING (Karlin-Previn)
2M2	JERRY AND POOKIE #2
2M3	WALK TO RINK
2M4-3M1	RINK
3M2, 3M2A	YOU'RE ABSOLUTELY WHACKY
3M3	BAR
3M4	GRAVEYARD
4M1	MONTAGE NO. 1 consisting of COME SATURDAY MORNING (Karlin-Previn)
6M1	CHURCH
6M1A	CHURCH PART 2
6M2	MONTAGE NO. 2 consisting of COME SATURDAY MORNING (Ka lin-Previn)
7M1	POOKIE ADAMS #1
7M1A-8M1	JERRY
	IT'S GONE consisting of COME SATURDAY MORNING (Karlin-Previn)
8M2	THREE SCENE
8M4-9M1	THE WIERDOS

EXHIBIT D - CERTIFICATION BY FRED KARLIN, DATED MAY 26, 1969 - ANNEXED TO AFFIDAVIT OF WILLIAM STINSON

10M1	EASTER WEEK
10M2	POOKIE LEAVES #1
10M3-11M1	POOKIE LEAVES #2 and COME SATURDAY MORNING (Karlin-Previn)
11M2-12M1	JERRY FINDS POOKIE
12M2	POOKIE ADAMS #2
12M2A	END WALK

as an employee of Paramount Pictures Corporation (hereinafter refer to as the Employer), pursuant to agreement dated the 15th day of January, 1969, as amended, in the performance of my duties thereunder and in the regular course of such employment, and that the Employer is the author thereof and entitled to the copyright therein, with the right to make such changes therein and such uses thereof as the Employer may determine as author.

I hereby further certify that the works separately composed by me were not copied or adapted from any other work, except as indicated thereon.

Dated: May 26, 1969

Fred Karlin

THE STERILE CUCKOO

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On this 17th day of May, 1972, before me, Alex S. Urbach, a Notary Public in and for said County and State, personally appeared FRED KARLIN, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

OFFICIAL SEAL
ALEX S. URBACH
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires March 23, 1976

AFFIDAVIT OF JOHN D. GARR
IN OPPOSITION TO PLAINTIFFS' MOTION

(Reproduced herein at pages 457a through 462a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al.,	:	
Plaintiffs	:	72 Civil Action File No. 542
-against-	:	SJR
UNIVERSAL PICTURES, INC., et al.	:	
Defendants	:	

AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

JOHN D. GARR, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice in the State of California. I am employed by Twentieth Century-Fox Film Corporation ("TCF") as Associate Resident Counsel. I have held that position continuously from October, 1958 to the present time, except for a two-year period commencing July, 1962, when I was employed by another company. As Associate Resident Counsel of TCF, I have participated in the collective bargaining negotiations with the Composers and Lyricists Guild of America, Inc. (CLGA), and have had responsibility for the preparation of employment agreements for composers and lyricists ("composers") employed by TCF in connection with the production of television programs and, for a portion of the time, motion pictures. I submit this affidavit in opposition to plaintiffs' motion for summary judgment.

2. I am familiar with the terms of the now expired 1967 Collective Bargaining Agreement between the producers and the CLGA, as well as earlier collective bargaining agreements between the parties. Nothing in any of these agreements deprived any composer of his right to negotiate freely with TCF for the ownership of copyrights to material produced by him, and TCF has not been party to any agreements or understanding with any other producer of motion pictures or television programs to deprive any composer of any of such rights.

3. Plaintiffs' affidavits seek to argue that composers are "independent contractors", rather than "employees". Although a few composers prefer, for tax reasons, to render services through corporations owned or controlled by them, it is clear that through the years, the composers have generally regarded themselves as employees; have referred to themselves as employees; have taken advantages of their employment status; and have engaged in collective bargaining through their trade union, the CLGA.

4. The 1969 Directory of the CLGA describes itself as:

> "a labor union, duly certified by the NLRB to represent composers and lyricists in their employment relationships with producers of theatrical and television motion pictures."

Another brochure of the CLGA with which I am familiar contains the following description:

> "The Composers and Lyricists Guild of America, Inc. - known as CLGA - a non-profit corporation under California law - is a labor union, duly certified by the NLRB to represent composers and lyricists in their employment relationships with the theatrical and television motion picture producers, to protect, preserve and advance the interests of its members in the

composition of music and lyrics, to insure the protection of their rights arising from composition; to engage in collective bargaining on behalf of composers and lyricists; to obtain better conditions of employment; and to effect concerted action by the membership whenever necessary to help ourselves and the industry."

5. The CLGA has not only represented itself to be a labor union; it has acted like a labor union in invoking provisions of the National Labor Relations Act to compel collective bargaining, and in enforcing the union shop provisions of the multi-employer collective agreements which they have negotiated with the motion picture producers, including TCF. It also participates in pension and health and welfare funds, to which TCF was required to contribute during the time when the collective bargaining agreements were in effect.

6. That composers are generally employees of the producers is also established by the fact that their compensation is subject to income tax withholding. In addition, because they are employees, they pay significantly lower social security taxes than they would if they were independent contractors. And because they are employees, TCF is required by law to pay social security taxes on their behalf equal to the amount paid by the employees in question.

7. As employees, composers are protected by workmens' compensation and unemployment insurance; benefits to which TCF must make a financial contribution and as to which the composers would not be entitled in the absence of an employer-employee relationship.

8. Turning now to certain of the specific statements in the affidavits submitted by plaintiffs, I would note, at the outset that two of the six composer affidavits were

submitted by composers who, as far as I can determine, have never worked for TCF (John Parker, Richard Sherman); one was submitted by a composer who has not worked for TCF for at least thirteen years (David Raksin); and one was submitted by a composer whose own history refutes the claim of conspiracy (Fred Karlin).

9. The affidavit of David Raksin is particularly inaccurate and misleading in a number of respects. The records disclose that as of September, 1941, and for a considerable time thereafter, he was working for TCF on a non-exclusive "piecework" basis against a $100.00 weekly drawing account; and that he was free to work for other producers at the same time; and that he in fact did so. The records further disclose that in the period 1943-45, Raksin was hired on three separate occasions on a short term exclusive basis at a flat weekly salary, to create original scores for three pictures; that in August, 1945 TCF entered into an agreement under which Raksin was to compose music for three pictures a year, at a fixed weekly sum, for a minimum of fifteen weeks annually, and that services were performed by Raksin pursuant thereto. Under the 1945 contract, Raksin was free to offer his services to other producers when he was not actually working for TCF. The record further discloses that after 1948, Raksin was hired from time to time to work on specific pictures, the last such hiring having occurred in 1959. It is thus clear that Raksin's non-exclusive employment by TCF in the 1940's and 1950's did not differ substantially, except perhaps as to place of

performance, from the manner in which composers are employed today.*

10. The affidavit of Fred Karlin is also significantly inaccurate in a number of respects. In his affidavit, Karlin states that he has never been an employee of any of the motion picture studios which have produced pictures for which he composed the music. Attached hereto, as Exhibit "1" is a copy of an employment agreement dated September 17, 1969 reflecting the creation of an employer-employee relationship between Karlin and TCF in respect to the composition of music for the picture "RUN,SHALOW,RUN". Karlin also states that contracts which his corporation enters into with producers contain a recital that the relationship thus created is that of an employer-employee, and that his corporation executes such contracts "only because the producers insist on it". TCF has never insisted upon a recital of an employer-employee relationship where none in fact existed. As will be noted from an examination of Exhibit "2", an agreement between Karlin's corporation and TCF with respect to the composition of music for the picture "MARRIAGE OF A YOUNG STOCKBROKER", the agreement does not recite that Karlin was to be an employee of TCF; nor was Karlin subject to the usual withholding, deductions, etc. applicable to employees.

11. The Karlin affidavit is also significant in that which it omits to mention, to wit, that despite the existence of the alleged "conspiracy", Karlin was able to

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* It should also be noted in passing that "LAURA" and "FOREVER AMBER" were produced in the 1940's. Thus, the music for those motion pictures could not have been produced, as implied by Raksin in his affidavit, after he left MGM in 1950 or 1951.

negotiate an agreement under which his corporation was to receive fifteen percent (15%) of the publisher's net profits derived from the music composed for the picture "MARRIAGE OF A YOUNG STOCKBROKER", the financial equivalent to a fifteen percent (15%) interest in the copyright.

12. In closing, I would note that over the years, employment and borrowing contracts have been negotiated in light of the fact that copyright ownership of the material in question would vest with TCF. The amounts paid to those composers are substantial by any standard. For example, Karlin's contract for the picture "RUN, SHADOW, RUN" (Exhibit 1), entitled him to a minimum compensation of $17,500.00 for ten weeks of work, together with a possibility of very substantial royalties at a later date; and the contract with his corporation (Exhibit 2) for "MARRIAGE OF A YOUNG STOCKBROKER" provides for a minimum payment of some $20,000.00. Obviously the economic value of the composer's services is lessened if TCF is to be deprived of all possibility of post-picture music exploitation royalties. I respectfully submit that in these circumstances, the Court should not permit itself to rewrite contracts freely entered into in favor of one of the parties at the expense of the other.

SWORN to and Subscribed
before me this 15th
day of October, 1973

Janet Medici
NOTARY PUBLIC

OFFICIAL SEAL
JANET MEDICI
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires Nov. 27, 1976

John D. Garr
JOHN D. GARR

EXHIBIT 1 - LETTER AGREEMENT DATED SEPTEMBER 17, 1969 - ANNEXED TO AFFIDAVIT OF JOHN D. GARR

(Reproduced herein at pages 464a through 477a)

TWENTIETH CENTURY-FOX FILM CORPORATION
P. O. BOX 900, BEVERLY HILLS, CALIFORNIA 90213
PHONE: (213) 277-2211 CABLE ADDRESS: CENTFOX, LOS ANGELES - TELEX: 6-74875

September 17, 1969

Mr. Fred Karlin
c/o William Morris Agency, Inc.
151 El Camino Drive
Beverly Hills, California 90212

This letter, when signed by you, will confirm our mutual agreement whereby we have engaged you as composer and conductor of the musical score---------- for our motion picture tentatively entitled "RUN SHADOW RUN" ----------and to render such other services as we may require of you in connection with the creation, composition, orchestration and recording of said score, upon the following terms and conditions:

1. The term of your employment hereunder shall commence on September 17, 1969 and said term will continue thereafter until the completion of all of the services we may require of you in connection with our motion picture aforesaid.

It is agreed that time is of the essence of this Agreement and that your agreement to deliver the material to be created by you hereunder as expeditiously as possible, consistent with good craftsmanship, is a material consideration for the execution of this Agreement.

2. As compensation in full for your services under this Agreement and for all of the rights granted and/or agreed to be granted to us under this Agreement in connection with

ADD:nk
9/22/69

said musical score, and provided that you shall perform and comply with all of the terms and conditions of this Agreement on your part to be performed and complied with, we shall pay you the sum of One Thousand Seven Hundred Fifty---------- Dollars ($1,750.00) per week for not less than ten (10) weeks of your services from the commencement of the term hereof. Said period is sometimes herein referred to as the "guaranteed employment period." The compensation payable for the guaranteed employment period is sometimes herein referred to as the "guaranteed compensation."

If we require your services hereunder after the expiration of the guaranteed employment period, we shall pay you, during such additional period, compensation at the weekly rate hereinbefore specified. For any period of such services which is less than one (1) week, your compensation shall be computed and paid on the basis that one (1) day is equal to one-fifth (1/5) of one (1) week. Except as hereinafter provided, such period that we may require your services beyond the end of the guaranteed employment period shall be consecutive and shall follow consecutively the end of the guaranteed employment period.

No compensation shall accrue or become due or payable to you hereunder during your inability, failure or refusal to perform, according to the terms and conditions hereof, the services for which we have contracted herein.

3. Your services shall be rendered either alone or in collaboration with others, in such manner as we may direct, under the instructions and control, in accordance with the ideas of and at the times and places required by our duly authorized representatives, and in a conscientious, artistic and efficient manner, to your best ability, with loyalty to our organization and with regard to a careful, efficient and economical operation of our business activities; it being understood that such activities involve a matter of art and taste to be exercised by us and that your services and the manner of rendition thereof are to be governed entirely by us. We shall not be deemed to have waived our right to require you to render any services herein included by assigning you to any particular kind of duties or services.

*Your hereby authorize and direct us to deliver our checks to you in care of William Morris Agency, Inc., 151 El Camino Drive, Beverly Hills, California 90212.

Wherever in this Agreement the terms "motion picture" or "motion picture production" or terms of similar tenor are used, such terms shall be conclusively deemed and construed to include the present and future developments of the motion picture industry, including talking motion pictures, movietone productions, television productions, and all forms of motion pictures and their accompanying devices which reproduce words, music and/or other sounds in synchronization with, accompaniment of, or supplementary to photography.

4. We shall be entitled to and shall own, in addition to your services, all of the results and proceeds thereof rendered for us (including, but not limited to, all rights throughout the world of production, manufacture, recordation and reproduction by any art or method, including television and/or radio broadcasting, and of copyright, copyright renewal, trademark and patent) whether such results and proceeds consist of literary, dramatic, musical, motion picture, mechanical or any other form of works, themes, ideas, compositions, creations or products, together with the rights generally known in the field of literary and musical endeavor as the "moral rights of authors" in and/or to any musical and/or literary proceeds of your services, including, but not limited to, the right to add to, subtract from, arrange, revise, adapt, rearrange, translate into any and all languages, change the sequence, change the characters and the descriptions thereof; and you do hereby assign and transfer to us all of the foregoing without reservation, condition or limitation. In the event that we shall desire to secure separate assignments of any of the foregoing, you shall execute the same upon our request therefor. If you shall fail or refuse to execute and deliver any such separate assignments, we shall have and are hereby granted the right and authority to execute the same in your name and as your attorney-in-fact. We shall have and are hereby granted the right to use and display your name and likeness for commercial, advertising or publicity purposes of any and every nature during the term of employment and perpetually in connection with all your work in the production of the motion picture hereunder, and you shall not, by means of press agents or publicity or advertising agencies, employed by you or paid by you, or otherwise, circulate, publish or otherwise disseminate any news stories or articles, books or other publicity containing your name, whether relating directly or indirectly to your employment or the subject matter of this Agreement.

5. You agree and warrant that all material composed or submitted by you hereunder for or to us shall be wholly original with you and shall not infringe upon or violate the right of privacy of, nor constitute a libel or slander against, nor violate any common law rights or any other rights of any person, firm or corporation. You agree that all material created, composed, submitted, added and/or interpolated by you hereunder shall automatically become our property and that we, for this purpose, shall be deemed the author thereof.

6. You hereby warrant that you are not under any obligation or disability, created by law or otherwise, which would, in any manner or to any extent, prevent or restrict you from entering into and fully performing this contract.

7. You shall have no authority to employ other persons or to contract in any manner for or on our behalf unless specific written authority so to do shall be hereafter granted to you by our duly authorized officer or agent.

8. If, by reason of fire, earthquake, labor dispute or strike, an act of God or a public enemy, any municipal ordinance, any state or federal law, governmental order or regulation, or other cause beyond our control, we are either prevented from or materially hampered in the production of motion pictures or the distribution of motion pictures, or if, by reason of the closing of substantially all of the theatres in the United States for any of the aforesaid or other causes, our production of motion pictures is suspended, or if, by reason of any thing or occurrence not within our control, the production or completion of said motion picture is materially hampered, interrupted or interfered with, then we may suspend the operation of this Agreement for such time as such disability on our part shall continue, and no compensation shall accrue or become due or payable to you during the period of such suspension. Such suspension shall end upon the cessation of the cause thereof and, for the purpose of computing time under this Agreement, the period of such suspension shall be ignored and an equal period of time shall be added to the term of employment hereunder during which you shall render services hereunder for the same compensation that would have been paid hereunder but for such suspension. If a disability under this Article on our part continues for a period in

excess of eight (8) weeks, we shall have the right, upon written notice to you, to terminate this Agreement. If your compensation is suspended hereunder for a period in excess of eight (8) weeks, you shall have the right, upon written notice to us, to terminate this Agreement unless we, within five (5) days after actual receipt of such written notice from you, shall elect to and shall re-establish the operation of this Agreement.

9. If, by reason of mental or physical disability, you shall be incapacitated from performing or complying with any of the terms or conditions hereof for a period or aggregate periods in excess of seven (7) days during the term hereof, or if you shall otherwise fail or refuse to perform or comply with any of the terms or conditions hereof, then we shall have the right to terminate this Agreement upon notice to you of our election to terminate the same. If any claim of mental or physical disability is made by you or on your behalf, we shall have the right to have you examined by such physicians as we may designate.

10. This Agreement shall inure to the benefit of our licensees and assigns.

11. It is agreed that the rights granted to us hereunder in and to the musical compositions created by you for us during the term of employment hereunder include but are not limited to the following world-wide rights:

(a) To print, reprint, record mechanically (by any and all methods now known or to be devised or known in the future), and import and export said recordings, to publish, copy, vend, license, lease and sell the said property, or any part thereof, both as published and unpublished works, for all purposes throughout the world, and to copyright the same in our name in any and all countries of the world.

(b) To perform the said property, or any part thereof, privately and publicly for profit, in any form, and in any manner, in any and all countries

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of the world, including the right to record and to privately and publicly perform said property, or any part thereof, in synchronization with motion pictures, by radio broadcasting, by television, on the stage, and by any other method of performance not herein specifically enumerated and which may in the future be devised, invented or discovered.

(c) To change the title of said property, to arrange, revise, adapt, rearrange and make variations of the said music, to omit parts thereof or to add new parts thereto, and otherwise to change the said music, and to change, add to or omit parts of the lyrics (if any), and to translate the same into any and all languages, and to obtain copyright in such changes, additions, adaptations, variations and translations in any and all countries of the world.

It is the purpose of this Agreement and your intention to transfer to us all rights of every kind, nature and description (including the rights generally known in the field of literary and musical endeavor as the "moral rights of authors" and the rights of copyright and copyright renewal) throughout the world which you have or own in or to the said property and each and every part thereof, and no right of any kind, nature or description is reserved by you.

12. Should we, or any of our subsidiary or affiliated companies, or any of our assignees or licensees, exploit any of the music or musical compositions (hereinafter referred to as the "composition") then we, or such subsidiary or affiliated company, or such assignee or licensee, shall pay directly to you the following amount of royalty with respect to such composition, and our contract with such subsidiary or affiliated company, or assignee or licensee shall so require and if our contract does so provide then we shall not be responsible for payment of the royalties hereunder:

(a) Six cents (6¢) ~~Five cents (5¢)~~ per copy in respect of regular piano copies sold and paid for in the United States and Canada.

(b) Fifty percent (50%) of all net sums received by the publisher in respect of regular piano copies, orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and/or instruments, and/or other copies of the composition sold in any country other than the United States and Canada; provided, however, that if the publisher should sell such copies through, or cause them to be sold by, a subsidiary or affiliate or any assignee or licensee which is actually doing business in a foreign country, then in respect of such sales, the publisher shall pay to you ten percent (10%) of the wholesale selling price in respect of each such copy sold and paid for.

(c) Ten percent (10%) of the wholesale selling price (after trade discounts, if any) of each copy sold and paid for in the United States and Canada, or for export from the United States, of orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and/or instruments, and/or other copies of the composition (other than regular piano copies).

(d) (i) If the composition, or any part thereof, is included in any song book, song sheet, folio or similar publication issued by the publisher containing at least four (4), but not more than twenty-five (25) musical compositions, the royalty to be paid by the publisher to you shall be an amount determined by dividing ten percent (10%) of the wholesale selling price (after trade discounts, if any) of the copies sold, among the total number of copyrighted musical compositions included in such publication. If such publication contains more than twenty-five (25) musical compositions, said ten percent (10%) shall be increased by an additional one-half percent (1/2%) for each additional musical composition.

(ii) If, pursuant to a license granted by the publisher to a licensee not controlled by or affiliated with it, the composition, or any part thereof, is included in any song book, song sheet, folio or similar publication, con-

taining at least four (4) musical compositions, the royalty to be paid by the publisher to you shall be that proportion of fifty percent (50%) of the gross amount received by it from the licensee, as the number of uses of the composition under the license and during the license period bears to the total number of uses of the publisher's copyrighted musical compositions under the license and during the license period. Such royalties shall be computed and paid within thirty (30) days after the expiration of the term of each license, but if any such license term is in excess of one (1) year, such royalties shall be computed and paid annually.

(iii) In computing the number of the publisher's copyrighted musical compositions under subdivision (ii) hereof, there shall be excluded musical compositions in the public domain and arrangements of musical compositions in the public domain, if no royalties are payable with respect to such arrangements by the publisher.

(iv) Royalties on publications containing less than four (4) musical compositions shall be payable at regular piano copy rates.

(e) You shall not be entitled to receive any royalties on the following:

(i) Complimentary copies.

(ii) Copies sold but not paid for.

(iii) Copies sold and returned to the Publisher.

(iv) Copies given away as new issues or for advertising purposes.

(v) Professional material not sold or resold.

(f) Fifty percent (50%) of all net sums actually received by the publisher in respect of any licenses (including statutory royalties) authorizing the manufacture of parts of

instruments serving to mechanically reproduce the composition; or to use the composition in synchronization with sound motion pictures produced by anyone other than: (i) us, our subsidiary and affiliated companies; (ii) any company using the composition in a motion picture financed substantially by or to be distributed by us; and (iii) the producer for whom the composition was originally composed, and its subsidiary and affiliated companies; or to reproduce it upon electrical transcription for broadcasting purposes; except that you shall not be entitled to any share of the monies distributed to the publisher by any performing rights society anywhere in the world, or other source, which makes a distribution to composers either directly or through another performing rights society or other person, company, society, association or organization.

(g) If the publisher administers licenses authorizing the manufacture of parts of instruments serving to mechanically reproduce said composition, or the use of said composition in synchronization or in timed relation with sound motion pictures produced by anyone other than: (i) us, our subsidiary and affiliated companies; (ii) any company using the composition in a motion picture financed substantially by or to be distributed by us; and (iii) the producer for whom the composition was originally composed and its subsidiary and affiliated companies; or its reproduction upon electrical transcriptions, or any of them, through an agent, trustee or other administrator acting for a substantial part of the industry and not under the exclusive control of the publisher (hereinafter sometimes referred to as "licensing agent"), the publisher, in determining his receipts, shall be entitled to deduct from gross license fees paid by the licensee, a sum equal to the charges paid by the publisher to said licensing agent.

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Nothing in this Agreement shall be construed to obligate us or our licensees or assigns to publish, record, reproduce or otherwise exploit any composition created by you hereunder; provided that in the event the same shall be published, it shall be published by a publisher selected by us.

(i) We recognize that you are (and through December 31, 1969 will remain) a member of the American Society of Composers, Authors and Publishers and as such you reserve certain rights by reason of your membership in ASCAP. We further recognize that effective January 1, 1970, you ~~shall~~ may become a member of Broadcast Music, Inc.(and as such you reserve certain rights by reason of your planned membership in BMI.) and you will notify us in writing if you join BMI. see 2/14/72 Memo

13. You agree to execute and procure any other instruments necessary to convey, assign or copyright the rights herein granted in any country throughout the world; and, if it shall be necessary, under the laws of any country, that copyright registration be acquired in your name, we shall have the right to apply for said copyright registration in your name, and, in such event, you shall assign and transfer the same to us. You further agree to execute, acknowlege, procure and deliver to us such short form assignments as we may require for the purposes of recording in the United States or elsewhere. In the event of your failure to execute any such assignments, we shall have the irrevocable right and authority to execute the same in your name and as your attorney in fact.

14. You agree to take such steps and proceedings as may be necessary to renew or extend any and all copyrights which may be secured upon any of the compositions created by you hereunder. Promptly upon any such renewal or extension and without the payment of any further consideration by us, you shall assign to us for such renewed or extended term all the rights in said compositions granted to us under this Agreement.

If you fail to do any of the things specified in the paragraph immediately preceding, we are hereby granted the irrevocable right and authority to perform such acts and to take such proceedings in your name and as your attorney in fact.

15. You shall at all times indemnify us, our successors, assigns and licensees, from and against any and all claims, demands, causes of action, costs, expenses, losses, damages, judgments and attorneys' fees arising out of or resulting from any breach by you of any of your representations, warranties or agreements hereunder.

We shall have the right to cause the Publisher to withhold and pay to us from any royalties which may become due to you hereunder, amounts equal to any sums paid by us to settle or discharge any claims, which, in our discretion, are bona fide and result from the infringement or alleged infringement of the compositions to be created by you hereunder upon the music or lyrics of any previously created musical or lyrical compositions; and we may also satisfy from said royalties any judgments obtained as a result of any such infringement.

16. During the term of this Agreement, at such time or times and during such period or periods as it may be lawful for us to require you so to do, you, at your sole cost and expense, at our request, shall remain or become and remain a member in good standing of the then properly designated labor organization or organizations (as then defined and determined under the then applicable law) representing persons performing services of the type and character that are required to be performed by you hereunder.

17. You hereby appoint and authorize Motion Picture Relief Fund of America, Inc. as your attorney in fact to collect an amount equal to one per cent (1%) of all compensation due or payable to you hereunder during the term hereof; it being further agreed that said power of attorney shall remain in effect until written notice of the revocation thereof is served upon us by you.

You hereby agree that the payment by us to Motion Picture Relief Fund of America, Inc. of any amount or amounts in this Article provided for, prior to your revocation of the foregoing power of attorney, shall constitute payment to you of all such amounts and a release and discharge of our obligation to pay such amounts to you hereunder.

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18. We agree to cause the Publisher to render or cause to be rendered to you, on or before thirty (30) days after the 15th day of February and the 15th day of August in each calendar year, statements of all royalties earned by you pursuant to this Agreement; and we further agree to cause the Publisher to pay said royalties so due not later than ten (10) days after the delivery of said statement. Any failure on the part of the Publisher to perform as herein specified shall not constitute a breach on our part of any provision of this Agreement. The statements and payments herein provided for shall be mailed to you in care of William Morris Agency, Inc., 151 El Camino Drive, Beverly Hills, California 90212, or at such other place as you may hereafter designate in a written notice to us.

19. This Agreement shall be subject to our Collective Bargaining Agreement with the Composers & Lyricists Guild of America so long as we are a signatory to such an Agreement.

20. Wherever the pronouns "we," "our," "ours," "ourselves" or "us" appear in this Agreement such pronouns shall be construed to refer to and mean solely the undersigned, Twentieth Century-Fox Film Corporation.

21. In the event you shall fully complete all of the services we may require of you hereunder in connection with said motion picture, we shall cause your name to be given credit for your contribution to said motion picture as follows:

a. On a separate card, in the main title, on all positive prints of the motion picture to read: "Music by Fred Karlin," the size of which shall be at our discretion.

b. In all paid advertising issued by us except group, list, teaser, trailer or special advertising or advertisements of eight (8) column inches or less, the size and placement of which shall be at our discretion.

Any casual or inadvertent failure on our part to comply with the provisions of this Article shall not be deemed a breach of this Agreement.

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22. We shall have the right, for ourselves and our assigns to utilize the sound track of said motion picture in connection with the manufacture, distribution, sale or other use of a commercial phonograph record album. On the condition that you fully complete all of the services which we may require of you hereunder, then in the event the sound track of said motion picture is so utilized, we agree as follows:

(a) You shall be paid a royalty in connection with the sales of such albums. The basic royalty rate shall be five percent (5%) of ninety percent (90%) of the net sales of such albums manufactured and sold in the United States; and, with respect to albums sold outside of the United States and for record club sales and direct mail offer sales, the basic royalty rate shall be two and one-half percent (2½%) of ninety percent (90%) of the net sales of such albums based upon the foregoing list prices.

We, or our assigns, shall pay all principals, conductors, featured players, the musicians and the members of the chorus, if any, the arrangers and the copyists, at applicable union scale for such albums and a portion of such payments shall be deemed to be a non-returnable advance to you and shall be deducted from any royalties payable to you in connection with such albums. The portion of such payments which is to be deemed a non-returnable advance to you shall be the same pro rata portion of such payments as applies to your share of the basic royalties.

We, or our assigns, may produce and release recordings containing such portions of the sound track of said motion picture, together with other recorded material, and in such event, the royalties payable to you hereunder in respect to such recordings shall be pro rated according to the number of compositions from the sound track and the number of compositions in such other recorded material.

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(b) We shall have the right to use your name and/or likeness on the cover of said album and in the advertising and exploitation of such album and you shall be afforded prominent credit on the cover of such album.

Kindly confirm our mutual understanding and agreement with respect to the foregoing by affixing your signature under the words "ACCEPTED AND AGREED TO" at the end hereof.

Commitment Approved
By [signature]
Date FEB 20 '70
Form Approved
By [signature]
Legal Dept.
Date FEB 20 70

Very truly yours,

TWENTIETH CENTURY-FOX FILM CORPORATION

By [signature]
Its VICE PRESIDENT
PRODUCTION-BUSINESS AFFAIRS

ACCEPTED AND AGREED TO:

[signature]
FRED KARLIN

EXHIBIT 2 - LETTER AGREEMENT DATED MAY 25, 1971 - ANNEXED TO AFFIDAVIT OF JOHN D. GARR

(Reproduced herein at pages 480a through 502a)

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TWENTIETH CENTURY-FOX FILM CORPORATION
P. O. BOX 900, BEVERLY HILLS, CALIFORNIA 90213
PHONE: (213) 277-2211 CABLE ADDRESS: CENTFOX, LOS ANGELES - TELEX: 6-74875

May 25, 1971

Whachamacallum, Inc.
c/o William Morris Agency, Inc.
151 El Camino
Beverly Hills, California 90212

Gentlemen:

This letter will confirm our mutual understanding and agreement as follows:

1. (A) You hereby agree to lend to us and we hereby borrow from you, upon the terms and conditions herein specified, the services of FRED KARLIN (herein called the "Composer"), to compose, arrange, conduct and orchestrate an original score for our motion picture tentatively entitled "MARRIAGE OF A YOUNG STOCKBROKER", and to render such other services as we may require of him in connection with the creation, composition, arranging, orchestration and recording of said score. Said services shall be non-exclusive.

You hereby represent and warrant that you are a California corporation; that you have entered into a written contract with the Composer which is now in full force and effect and pursuant to which you have the right and authority to lend to us the services of the Composer upon the terms and conditions herein specified.

(B) The term of this agreement shall commence on June 7, 1971, and said term will continue thereafter until the completion of all of the services we may require of the Composer in connection with our motion picture as aforesaid. A total period of ten (10) weeks from and after the designated starting date of the term hereof is sometimes hereinafter called the "ten (10) week term hereof."

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It is agreed that time is of the essence of this agreement and that the delivery of the material to be created by the Composer hereunder as expeditiously as possible, consistent with good craftsmanship, is a material consideration for the execution of this agreement.

2. As compensation in full for the Composer's services during the ten (10) week period provided for in Article 1 hereof, and for all of the rights granted and/or agreed to be granted to us under this agreement in connection with said musical score of such motion picture "MARRIAGE OF A YOUNG STOCKBROKER", and provided that the Composer shall perform and comply with all of the terms and conditions of this agreement on his part to be performed and complied with, we shall pay you the flat sum of TWENTY THOUSAND DOLLARS ($20,000.00). Said Twenty Thousand Dollars ($20,000.00) shall be payable as follows:

(a) SIX THOUSAND SIX HUNDRED SIXTY-SIX DOLLARS ($6,666.00) upon the commencement of your services hereunder;

(b) SIX THOUSAND SIX HUNDRED SIXTY-SIX DOLLARS ($6,666.00) on or about July 2, 1971; and

(c) The balance upon completion of recording hereunder. (At the present time the recording is scheduled for July 8, 1971 and July 9, 1971.)

No compensation shall accrue or become due or payable to you hereunder during the Composer's inability, failure or refusal to perform, according to the terms and conditions hereof, the services for which we have contracted herein.

3. The Composer's services shall be rendered either alone or in collaboration with others, in such manner as we may direct, under the instructions and control, in accordance with the ideas of and at the times and places required by our duly authorized representatives, and in a conscientious, artistic and efficient manner, to the Composer's best ability, with loyalty to our organization and with regard to a careful, efficient and economical operation of our business activities; it being understood that such activities involve a matter of art and taste to be exercised by us and that the Composer's services and the manner of rendition thereof are to be governed entirely by us. We shall not be deemed to have waived our right to require the Composer to render any services herein included by assigning him to any particular kind of duties or services.

Wherever in this agreement the terms "motion picture" or"motion picture production" or terms of similar tenor are used, such terms shall be conclusively deemed and construed to include the present and future developments of the motion picture industry, including talking motion pictures, movietone productions, television productions and all forms of motion pictures and their accompanying devices which reproduce words, music and/or other sounds in synchronization with, accompaniment of or supplementary to photography.

4. We shall be entitled to and shall own, in addition to the Composer's services, all of the results and proceeds thereof rendered for us (including, but not limited to, all rights throughout the world of production, manufacture, recordation and reproduction by any art or method, including television and/or radio

broadcasting, and of copyright, copyright renewal, trade-make and patent) whether such results and proceeds consist of literary, dramatic, musical, motion picture, mechanical or any other form of works, themes, ideas, compositions, creations or products, together with the rights generally known in the field of literary and musical endeavor as the "moral rights of authors" in and/or to any musical and/or literary proceeds of the Composer's services, including, but not limited to, the right to add to, subtract from, arrange, revise, adapt, rearrange, translate into any and all languages, change the sequence, change the characters and the descriptions thereof; and you and the Composer do hereby assign and transfer to us all of the foregoing without reservation, condition or limitation. In the event that we shall desire to secure separate assignments of any of the foregoing, you and the Composer shall execute the same upon our request therefor. If you or the Composer shall fail or refuse to execute and deliver any such separate assignments, we shall have and are hereby granted the right and authority to execute the same in your name and the Composer's name and as your and the Composer's attorney-in-fact. We shall have and are hereby granted the right to use and display the Composer's name and likeness for commercial, advertising or publicity purposes of any and every nature during the term of this agreement and perpetually in connection with all of the Composer's work in the production of the motion picture hereunder, and neither you nor the Composer shall, by means of press agents or publicity or advertising agencies employed or paid by you or the Composer, or otherwise, circulate, publish or otherwise disseminate any news stories or articles, books or other publicity containing the Composer's name, whether relating directly or indirectly to the subject matter of this agreement.

5. You and the Composer agree and warrant that all material composed or submitted by the Composer hereunder for or to us shall be wholly original with

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the Composer and shall not infringe upon or violate the right of privacy of nor constitute a libel or slander against, nor violate any common law rights or any other rights of any person, firm or corporation. You and the Composer agree that all material created, composed, submitted, added and/or interpolated by the Composer hereunder shall automatically become our property and that we, for this purpose, shall be deemed the author thereof.

6. You and the Composer hereby warrant that neither you nor the Composer is under any obligation or disability, created by law or otherwise, which would, in any manner or to any extent, prevent or restrict you from entering into and fully performing this contract.

7. Neither you nor the Composer shall have any authority to employ other persons or to contract in any manner for or on our behalf unless specific written authority so to do shall be hereafter granted by us or by our duly authorized officer or agent.

8. If, by reason of fire, earthquake, labor dispute or strike, an act of God or a public enemy, any municipal ordinance, any state or federal law, governmental order or regulation, or other cause beyond our control, we are either prevented from or materially hampered in the production of motion pictures or the distribution of motion pictures, or if, by reason of the closing of substantially all of the theatres in the United States for any of the aforesaid or other causes, our production of motion pictures is suspended, or if, by reason of any thing or occurrence not within our control, the production or completion of said motion picture "MARRIAGE OF A YOUNG STOCKBROKER" is materially hampered, interrupted or interfered with, then we may suspend the operation of this agreement for such time as such disability on our part shall continue and no compensation shall accrue or become due or payable to you during the period of such suspension. Such suspension shall end upon the cessation of the cause thereof

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and, for the purpose of computing time under this agreement, the period of such suspension shall be ignored and an equal period of time shall be added to the term of employment hereunder during which the Composer shall render services hereunder for the same compensation that would have been paid to you hereunder but for such suspension. If a disability under this article on our part continues for a period in excess of eight (8) weeks, we shall have the right, upon written notice to you, to terminate this agreement. If your compensation is suspended hereunder for a period in excess of eight (8) weeks, you shall have the right, upon written notice to us, to terminate this agreement unless we, within five (5) days after actual receipt of such written notice from you, shall elect to and shall re-establish the operation of this agreement.

9. If, by reason of mental or physical disability, the Composer shall be incapacitated from performing or complying with any of the terms or conditions hereof for a period or aggregate periods in excess of seven (7) days during the term hereof, or if the Composer shall otherwise fail or refuse to perform or comply with any of the terms or conditions hereof, then we shall have the right to terminate this agreement upon notice to you of our election to terminate the same. If any claim of mental or physical disability is made by the Composer or on his behalf, we shall have the right to have the Composer examined by such physicians as we may designate.

10. This agreement shall inure to the benefit of our licensees and assigns.

11. It is agreed that the rights granted to us hereunder in and to the musical compositions created by the Composer for us during the term of this agreement include, but are not limited to, the following world-wide rights:

(a) To print, reprint, record mechanically (by any and all methods now known or to be devised or known in

the future), and import and export said recordings, to publish, copy, vend, license, lease and sell the said property, or any part thereof, both as published and unpublished works, for all purposes throughout the world, and to copyright the same in our name in any and all countries of the world.

(b) To perform the said property, or any part thereof, privately and publicly for profit, in any form, and in any manner, in any and all countries of the world, including the right to record and to privately and publicly perform said property, or any part thereof, in synchronization with motion pictures, by radio broadcasting, by television, on the stage, and by any other method of performance not herein specifically enumerated and which may in the future be devised, invented or discovered.

(c) To change the title of said property, to arrange, revise, adapt, rearrange and make variations of the said music, to omit parts thereof or to add new parts thereto, and otherwise to change the said music, and to change, add to or omit parts of the lyrics (if any) and to translate the same into any and all languages and to obtain copyright in such changes, additions, adaptations, variations and translations in any and all countries of the world.

It is the purpose of this agreement and the intention of both you and the Composer to transfer to us all rights of every kind, nature and description

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(including the rights generally known in the field of literary and musical endeavor as the "moral rights of authors" and the rights of copyright and copyright renewal) throughout the world which you or the Composer may have or own in or to the said property and each and every part thereof and no right of any kind, nature or description is reserved by you or the Composer.

12. Should we, or any of our subsidiary or affiliated companies, or any of our assignees or licensees, exploit any of the music or musical compositions (hereinafter referred to as the "composition") composed by the Composer hereunder, then we, or such subsidiary or affiliated company, or such assignee or licensee, shall pay directly to Composer, individually, the following amount of royalty with respect to such composition, and our contract with such subsidiary or affiliated company, or assignee or licensee, shall so require and if our contract does so provide, then we shall not be responsible for payment of the royalties hereunder:

(a) Six cents (6¢) per copy in respect of regular piano copies sold and paid for in the United States and Canada.

(b) Fifty percent (50%) of all net sums received by the publisher in respect of regular piano copies, orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and/or instruments, and/or other copies of the composition sold in any country other than the United States and Canada; provided, however, that if the publisher should sell such copies through, or cause them to be sold by, a subsidiary or affiliate or any assignee or licensee which is actually doing business in a foreign country, then in respect

country, then in respect of such sales, the publisher shall pay to Composer ten percent (10%) of the wholesale selling price in respect of each such copy sold and paid for.

(c) Ten percent (10%) of the wholesale selling price (after trade discounts, if any) of each copy sold and paid for in the United States and Canada, or for export from the United States, of orchestrations, band arrangements, octavos, quartets, arrangements for combinations of voices and/or instruments, and/or other copies of the composition (other than regular piano copies).

(d) (i) If the composition, or any part thereof, is included in any song book, song sheet, folio or similar publication issued by the publisher containing at least four (4), but not more than twenty-five (25) musical compositions, the royalty to be paid by the publisher to Composer shall be an amount determined by dividing ten percent (10%) of the wholesale selling price (after trade discounts, if any) of the copies sold, among the total number of copyrighted musical compositions included in such publication. If such publication contains more than twenty-five (25) musical compositions, said ten percent (10%) shall be increased by an additional one-half percent (1/2%) for each additional musical composition.

(ii) If, pursuant to a license granted by the publisher to a licensee not controlled by or affiliated with it, the composition, or any part thereof, is included in any song book

song sheet, folio or similar publication, containing at least four (4) musical compositions, the royalty to be paid by the publisher to Composer shall be that proportion of fifty percent (50%) of the gross amount received by it from the licensee, as the number of uses of the composition under the license and during the license period bears to the total number of uses of the publisher's copyrighted musical compositions under the license and during the license period. Such royalties shall be computed and paid within thirty (30) days after the expiration of the term of each license, but if any such license term is in excess of one (1) year, such royalties shall be computed and paid annually.

(iii) In computing the number of the publisher's copyrighted musical compositions under subdivision (ii) hereof, there shall be excluded musical compositions in the public domain and arrangements of musical compositions in the public domain, if no royalties are payable with respect to such arrangements by the publisher.

(iv) Royalties on publications containing less than four (4) musical compositions shall be payable at regular piano copy rates.

(e) Composer shall not be entitled to receive any royalties on the following:

(i) Complimentary copies.

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(ii) Copies sold but not paid for.

(iii) Copies sold and returned to the publisher.

(iv) Copies given away as new issues or for advertising purposes.

(v) Professional material not sold or resold.

(f) Fifty percent (50%) of all net sums actually received by the publisher in respect of any licenses (including statutory royalties) authorizing the manufacture of parts of instruments serving to mechanically reproduce the composition; or to use the composition in synchronization with sound motion pictures produced by anyone other than: (i) us, our subsidiary and affiliated companies; (ii) any company using the composition in a motion picture financed substantially by or to be distributed by us; and (iii) the producer for whom the composition was originally composed, and its subsidiary and affiliated companies; or to reproduce it upon electrical transcription for broadcasting purposes; except that Composer shall not be entitled to any share of the monies distributed to the publisher by any performing rights society anywhere in the world, or other source, which makes a distribution to composers either directly or through another performing rights society or other person, company, society association or organization.

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(g) If the publisher administers licenses authorizing the manufacture of parts of instruments serving to mechanically reproduce said composition, or the use of said composition in synchronization or in timed relation with sound motion pictures produced by anyone other than: (i) us, our subsidiary and affiliated companies; (ii) any company using the composition in a motion picture financed substantially by or to be distributed by us; and (iii) the producer for whom the composition was originally composed and its subsidiary and affiliated companies; or its reproduction upon electrical transcriptions, or any of them, through an agent, trustee or other administrator acting for a substantial part of the industry and not under the exclusive control of the publisher (hereinafter sometimes referred to as "licensing agent"), the publisher, in determining his receipts, shall be entitled to deduct from gross license fees paid by the licensee, a sum equal to the charges paid by the publisher to said licensing agent.

(h) The foregoing rates shall apply only in cases in which all of the music and lyrics of the composition have been composed by the Composer hereunder or in cases in which a musical composition has been composed by the Composer for which no lyrics have been written.

As to songs, if the Composer composes the music and another the lyrics, or if the Composer composes the lyrics and another the music, the foregoing rates shall apply, but one-half shall be allocated to Composer and one-half to the

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other author (no allowance being made for the title). If there shall be more than one composer or more than one lyricist, then they shall each agree between themselves upon the division of their half of the above royalties, but in the absence of such agreement, their half shall be divided equally between them. If the music alone is first exploited without lyrics and lyrics by another person are thereafter added, the lyricist shall not share in the royalties derived from the exploitation of the music alone without his lyrics.

The royalties hereinabove provided for shall be payable only in connection with compositions originally created by the Composer; it being agreed that no royalties shall be payable with reference to arrangements, orchestrations, translations or other adaptations or modifications of compositions written by others.

No royalties shall be payable for any uses made by us or by the independent producer for whom the composition was originally composed (or by our or their associated, affiliated, parent or subsidiary corporations, or by any persons, firms or other corporations with whom or with which any of said corporations may have contracts or arrangements for the production, performance, television exhibition or distribution of motion pictures) in motion pictures (theatrical or television) or in connection with any advertising, publicizing or exploitation thereof.

Nothing in this agreement shall be construed to obligate us or our licensees or assigns to publish, record, reproduce or otherwise exploit any composition created by the Composer hereunder; provided that in the event the same shall be published, it shall be published by a publisher selected by us.

(i) We recognize that the Composer is a member of Broadcast Music, Inc.

13. You and the Composer agree to execute and procure any other instruments necessary to convey, assign or copyright the rights herein granted in any country throughout the world; and, if it shall be necessary, under the laws of any country that copyright registration be acquired in your name or the Composer's name, we shall have the right to apply for said copyright registration in your name or the Composer's name and, in such event, you and the Composer shall assign and transfer the same to us. You and the Composer further agree to execute, acknowledge, procure and deliver to us such short-form assignments as we may require for the purpose of recording in the United States or elsewhere. In the event of your failure or the Composer's failure to execute any such assignment, we shall have the irrevocable right and authority to execute the same in your name or the Composer's name and as your and the Composer's attorney-in-fact.

14. You and the Composer agree to take such steps and proceedings as may be necessary to renew or extend any and all copyrights which may be secured upon any of the compositions created by the Composer hereunder. Promptly upon any such renewal or extension and

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without the payment of any further consideration by us, you and the Composer shall assign to us, for such renewed or extended term, all of the rights in said compositions granted to us under this agreement.

If you or the Composer fail to do any of the things specified in the paragraph immediately preceding, we are hereby granted the irrevocable right and authority to perform such acts and to take such proceedings in your name and the Composer's name and as your and the Composer's attorney-in-fact.

15. You and the Composer shall at all times indemnify us, our successors, assigns and licensees, from and against any and all claims, demands, causes of action, costs, expenses, losses, damages, judgments and attorneys' fees arising out of or resulting from any breach by you or the Composer of any of the representations, warranties or agreements hereunder. We shall similarly indemnify you and Composer for any liability either or both of you may sustain as a result of any additions or changes made by us pursuant to paragraph 11 (c) of this agreement.

We shall have the right to cause the publisher to withhold and pay to us from any royalties which may become due to Composer hereunder, amounts equal to any sums paid by us to settle or discharge any claims which, in our discretion, are bona fide and result from the infringement or alleged infringement of the compositions to be created by the Composer hereunder upon the music or lyrics of any previously created musical or lyrical compositions; and we may also satisfy from said royalties any judgments obtained as a result of any such infringement.

16. During the term of this agreement, at such time or times and during such period or periods as it may be lawful for us to require the Composer so to do, the Composer, at your or his sole cost and expense, at our request, shall remain or become and remain a member in good standing of the then properly designated labor organization or organizations (as then defined and determined under the then applicable law) representing persons performing services of the type and character that are required to be performed by the Composer hereunder.

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17. You hereby appoint and authorize Motion Picture Relief Fund of America, Inc., as your attorney-in-fact to collect an amount equal to one percent (1%) of all compensation due or payable to you hereunder during the term hereof; it being further agreed that said power of attorney shall remain in effect until written notice of the revocation thereof is served upon us by you.

You hereby agree that the payment by us to Motion Picture Relief Fund of America, Inc., for any amount or amounts in this article provided for, prior to your revocation of the foregoing power of attorney, shall constitute payment to you of all such amounts and a release and discharge of our obligation to pay such amounts to you hereunder.

18. We agree to cause the publisher to render or cause to be rendered to Composer, on or before thirty (30) days after the 15th day of February and the 15th day of August in each calendar year, statements of all royalties payable to Composer pursuant to this agreement; and we further agree to cause the publisher to pay said royalties so due not later than ten (10) days after the delivery of said statement. Any failure on the part of the publisher to perform, as herein specified, shall not constitute a breach on our part of any provisions of this agreement, except if such publisher is owned or controlled by us or by a parent or subsidiary corporation, and then only upon your giving us thirty (30) days' notice in writing within which we may cure such failure of the publisher. The statements herein provided for shall be mailed to Composer in care of William Morris Agency, Inc., 151 El Camino, Beverly Hills, California 90212, or at such other place as Composer may hereafter designate in a written notice to us.

19. This agreement shall be subjectto our Collective Bargaining Agreement with the Composers & Lyricists Guild of America so long as we are a signatory to such an agreement.

20. Wherever the pronouns "we," "our," "ours," "ourselves" or "us" appear in this agreement, such pronouns shall be construed to refer to and mean solely the undersigned, Twentieth Century-Fox Film Corporation.

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21. We agree that if we require lyrics to be written to any musical composition written by the Composer hereunder, we shall engage TYLWYTH KYMRY to write such lyrics at a total compensation of TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500.00).

22. In the event that Composer shall fully complete all services which we may require of Composer hereunder, and in the event we shall utilize in connection with said motion picture the musical score composed and conducted by Composer hereunder, we shall cause Composer's name to be given credit on the screen and in all paid advertising issued by us, except group, list, teaser, trailer or special advertising or advertisements of eight (8) column inches or less, in substantially the following form:

"MUSIC BY FRED KARLIN"

On the screen, said credit shall be afforded on a separate card of the main title on all positive prints of said motion picture.

Subject to the foregoing, the size, placement, manner and mode of such credit shall be at our sole discretion.

Any casual or inadvertent failure on our part to comply with the provisions of this Article shall not be deemed a breach of this agreement by us. The failure to comply with the provisions of this Article by any third party shall not constitute a default or a breach by us of this agreement.

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23. We shall have the right for ourselves and our assigns to utilize the sound track of said motion picture in connection with the manufacture, sale or other use of a commercial phonograph record album on the condition that you and the Composer fully complete all of the services that we may require of you and the Composer hereunder, then, in the event the sound track of said motion picture is so utilized, we agree to pay to you the standard royalties from the sales of such album.

The term "standard royalties", as used herein, shall mean the following:

(a) The basic royalty rate shall be five percent (5%) of ninety percent (90%) of the net sales of such albums, based upon the suggested retail list price of such albums manufactured and sold in the United States.

(b) Your royalty rate shall be that portion of the basic royalty rate as the number of bands conducted by the Composer in such album bears to the total number of bands in such album.

(c) Royalties applicable to records sold outside of the United States or through record clubs or by direct mail order, shall be at one-half (1/2) of your royalty rate.

(d) Royalties applicable to records sold for use as premiums or promotional merchandise shall be at one-half (1/2) of your royalty rate and shall be based on the price received for such records instead of the suggested retail list price.

(e) No royalties shall be payable on albums furnished as free or bonus records to members, applicants or other participants in any record club or on albums distributed for promotional purposes.

(f) Royalties applicable to albums sold for use as premiums or promotional merchandise shall be at one-half (1/2) of your royalty rate and shall be based on the price received for such albums instead of the suggested retail list price.

(g) For purposes of computing royalties, any excise, sales or comparable or similar taxes shall be excluded from the price; and that portion of the price which is or shall be customarily allocated by us or our licensees to packaging (such as, albums, jackets, boxes or other types of packages or containers) shall be excluded.

(h) We, or our assigns, shall pay all principals, featured players, the musicians and the members of the chorus, if any, conductor, the arrangers and copyists, all at applicable union scale for such album, and a portion of such payments shall be deemed to be a nonreturnable advance to you and shall be deducted from any royalties payable to you in connection with such album. Your portion of such advance and deduction shall be based on the relationship that your royalty rate shall bear to five percent (5%) of ninety percent (90%). For example, if your royalty rate is one percent (1%) of ninety percent (90%), then one-fifth (1/5) of the aforementioned payments shall be deemed to be a nonreturnable advance to you and deducted from any royalties payable to you.

(i) As used herein, the term "albums" or "phonograph record albums" shall refer to singles, discs, pre-recorded tapes, cartridges, and any other devices for the reproduction of sound, whether now or hereafter known, and regardless of the form of any such device, the material from which it is made or the speed at which it moves or revolves.

(j) We shall have the right to use Composer's name and/or likeness on the cover of said albums and in the advertising and exploitation of such albums and Composer shall be afforded prominent credit on the front cover of such albums, and on the album record labels. Said credit shall be substantially as follows: "Music Composed and Conducted by Fred Karlin".

24. All notices from us to you under or in connection with this Agreement may be given in writing by addressing the same to you in care of William Morris Agency, Inc., 151 El Camino, Beverly Hills, California 90212, and by depositing the same, so addressed, postage prepaid, in the United States mail. If such notice shall be sent by mail, as above provided, the date of mailing shall be deemed to be the date of service of such notice.

Any notice given in respect to any right of termination, suspension or extension under this Agreement, shall be in writing.

All notices from you to us hereunder shall be given in writing addressed to us as follows: Twentieth Century-Fox Film Corporation, P.O. Box 900, Beverly Hills, California 90213, Attention: Legal Department, and by depositing such notices, so addressed, postage prepaid, in the United States mail. Unless otherwise expressly provided herein, the date of mailing shall be deemed to be the date of service of such notice.

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25. Composer shall be consulted with respect to the choice of a vocalist, if any, provided, however, in the event of disagreement between us and the Composer, our decision shall prevail.

26. In the event it becomes necessary to hold a separate "live" recording session for a sound track recording, Composer shall conduct such session (subject to Composer's availability at such times as we may require) for which Composer shall be compensated at A.F.M. scale.

27. In the event the Composer composes the music for a song to be included in the motion picture, credit for such song shall be placed on an additional separate card, which card shall include the name of the Composer, the name of the lyricist, and the name of the vocal artist. The size and position of said credit shall be determined by us.

28. In addition to the compensation hereinabove provided, we agree to cause the publisher to pay to you fifteen percent (15%) of the publisher's net profits derived from the music and/or lyrics composed or written by Composer for said motion picture.

29. We hereby agree that, upon receipt of an invoice from you, we will reimburse you for the amount of your contribution to the Producers-Composers & Lyricists Guild of America Pension and Welfare Plan, based upon the compensation paid by you to the Composer for the rendition of Composer's services hereunder, in accordance with our customary manner; provided, however, we shall not be required to reimburse you in an amount greater than what we would have had to contribute to such Pension Plan had we employed the Composer directly at the rate of compensation herein provided, rather than borrowing the Composer's services from you.

Kindly confirm our mutual understanding and agreement with respect to the foregoing by affixing your signature under the words "ACCEPTED AND AGREED TO" at the end hereof.

Compliance Approved
By
Date 12 10 71
Form Approved
By Arthur Gellin
Legal Dept.
Date 12 9 1971

Very truly yours,

TWENTIETH CENTURY-FOX FILM CORPORATION

BY:

VICE PRESIDENT
PRODUCTION-BUSINESS AFFAIRS

ACCEPTED AND AGREED TO:

WHACHAMACALLUM, INC.

BY:

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May 25, 1971

Twentieth Century-Fox Film Corporation
P. O. Box 900
Beverly Hills, California 90213

Gentlemen:

Reference is made to the agreement, dated May 25, 1971 (herein called the "Lending Agreement") between Whachamacallum, Inc., and you, covering the loan to you of the services of the undersigned, FRED KARLIN, in connection with the motion picture tentatively entitled "MARRIAGE OF A YOUNG STOCKBROKER".

As an inducement to you to enter into the Lending Agreement, and as a material part of the consideration moving to you for so doing, the undersigned hereby represents, warrants and agrees as follows:

1. That the undersigned has heretofore entered into an agreement with Whachamacallum, Inc. (herein called the "Whachamacallum Agreement"), covering the rendition of the undersigned's services for Whachamacallum, Inc., and that Whachamacallum, Inc. has the right and authority to enter into the Lending Agreement and to lend to you the services of the undersigned upon the terms and conditions therein specified.

2. That the undersigned is familiar with each and all of the terms, covenants and conditions of the Lending Agreement and hereby consents to the execution thereof; that the undersigned shall render to you all of the services provided to be rendered by the undersigned under the Lending Agreement and shall perform and comply with all of the terms, covenants and conditions of such agreement on the part of the undersigned to be performed and complied with, even if the Whachamacallum Agreement should hereafter be suspended or terminated, or become ineffective; and the undersigned hereby covenants that he has heretofore granted to Whachamacallum, Inc. all of the rights granted by them to you under the Lending Agreement.

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3. That the undersigned is under no obligation or disability, created by law or otherwise, which would prevent or restrict the undersigned from rendering to you all of the services provided to be rendered by the undersigned under the Lending Agreement, or from performing and complying with all of the terms, covenants and conditions of such agreement on the part of the undersigned to be performed and complied with.

4. That the undersigned shall look solely to Whachamacallum, Inc. for all compensation or other remuneration for any and all services which the undersigned may render to you in connection with the production of said motion picture entitled "MARRIAGE OF A YOUNG STOCKBROKER".

Very truly yours,

Fred Karlin

FRED KARLIN

AFFIDAVIT OF ROBERT K. JACKMAN
IN OPPOSITION TO PLAINTIFFS' MOTION

(Reproduced herein at pages 504a through 509a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al.,	:	72 Civ. 542
Plaintiffs,	:	
- against -	:	AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND PRELIMINARY INJUNCTION
UNIVERSAL PICTURES, INC., et al.,	:	
Defendants.	:	

STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

ROBERT K. JACKMAN, being duly sworn, deposes and says:

1. I am employed by Walt Disney Productions (hereinafter referred to as "Disney"), one of the defendants in the above entitled action, as the Manager of its Music Department. I make this affidavit in opposition to plaintiffs' motion for summary judgment and for a preliminary injunction.

2. I have been employed by Disney for over 31 years. For the last 18-1/2 years, I have served as the Manager of Disney's Music Department. During my tenure as Manager of the Music Department, my overall responsibility has been to ensure that all activities connected with the writing, scoring and recording of music for Disney's theatrical and television motion pictures are properly scheduled, coordinated and executed.

3. Among my specific duties as Manager of Disney's Music Department is the responsibility of negotiating with composers and lyricists regarding their employment by Disney. Over the past 18-1/2 years, I have participated personally in the conduct of most of these negotiations on behalf of Disney. To my

knowledge, at no time has Disney ever been a party to any agreement or understanding with anyone which denied or deprived composers and/or lyricists of their right to negotiate freely with Disney or anyone else regarding the ownership of copyrights or other terms of employment.

4. I am familiar with the Minimum Basic Agreements which have been negotiated in the past between the Composers and Lyricists Guild of America, Inc. and the Association of Motion Picture and Television Producers, Inc. and have, on occasion, been involved in these negotiations. These Agreements, which came about through collective bargaining negotiations between the composers and lyricists on the one hand and the producers on the other, set forth minimum terms of employment. The composers and lyricists who have been employed by Disney have always been free to negotiate for more favorable terms and frequently have been able to obtain more favorable terms from Disney.

5. Since the advent of the first Minimum Basic Agreement in 1960, every composer and/or lyricist employed by Disney has been paid a compensation in excess of the minimum compensation called for under the Minimum Basic Agreements. On a number of occasions, individual composers and lyricists have been successful in negotiating greater royalty payments from Disney than those provided in the Minimum Basic Agreements. As to copyrights, I am aware of only three instances prior to the institution of this action where composers and/or lyricists employed by Disney made requests concerning the ownership of copyrights in the music and/or lyrics written by them. These requests were made by Roger Miller in 1970, Billy Barnes in 1971, and Rod McKuen in 1971. In each such instance, an ownership interest in the copyrights concerned was granted to these individuals.

6. Disney employs composers who are maintained on staff and composers and lyricists who are hired for the duration of specific assignments. At the present time, Disney has four staff composers. Three of these staff composers have been employed by Disney for over 18 years and the other has been employed by Disney for 10 years. The hiring of outside composers and lyricists for specific assignments is usually conducted as follows: Initially, the producer of a proposed Disney motion picture has in mind a certain composer and/or lyricist whom he believes is suited to write music and/or lyrics for the particular motion picture which is being produced. The producer then contacts me regarding the availability for hire of such composer and/or lyricist. I, in turn, contact the composer and/or lyricist, usually through his agent. If the composer and/or lyricist is available for employment, I then negotiate the compensation and other terms of his employment with his agent. All such negotiations are conducted on an individual basis. During the course of these negotiations, I consult with the Disney producer concerned to determine if the compensation requested by the composer and/or lyricist is consistent with the budgetary requirements of the picture. If the producer and the composer and/or lyricist are both ultimately satisfied with the terms negotiated between myself and the agent, the composer and/or lyricist is hired by Disney on the agreed terms. If the agent and I are unable to reach a position mutually agreeable to the parties, negotiations are broken off. At this point, if the producer has another choice of a composer and/or lyricist who would be suitable to write for the particular production in question, I will commence negotiations with this composer and/or lyricist. From Disney's standpoint, it is at all times guided in its negotiations with composers and/or lyricists solely by its own independent business judgment.

7. A composer and/or lyricist employed by Disney works very closely with the producer of the motion picture for which the music is being written. The producer is in control at all times with respect to the music product which will appear in his picture. As to background music, which is generally fitted to the motion picture after the picture is shot, the producer will generally sit with the composer at a screening of the picture and point out to the composer the type of music he would like and where he would like it to appear in the picture. Thereafter, the producer will usually listen to the main theme of the music played on a piano before it is written for the orchestra. Songs for a motion picture are generally written prior to the shooting of that particular picture. In this case, the producer meets with the songwriter and explains the type of song he wants. The producer may go into detail at this point regarding how he desires the song to follow a certain story line. After a song is composed, it is not unusual for the producer to require that it be rewritten or reworked by the songwriter a number of times before the producer is finally satisfied. In addition to the producer, a composer and/or lyricist employed by Disney also works closely with other Disney personnel. For example, he works with me, as the Manager of the Department, to determine how large an orchestra he will be allowed and the amount of time his scoring is expected to take. Any problems he may encounter are also directed to me. He works with the music editor with regard to timing sheets. He works with the music librarian concerning the copying of music. He works with Disney's orchestra manager regarding the selection and employment of the musicians who will record the music.

8. Disney's staff composers perform their work at the Disney Studio, although they also work at home on occasion if they desire. At the Disney Studio they utilize office space and

supplies and equipment provided by Disney. In all cases, these staff composers have filed Federal W-4 forms with Disney and Disney withholds applicable Federal and state income taxes from their compensation. In the case of non-staff composers and/or lyricists, Disney makes available office space at the Studio and whatever supplies, equipment and assistance they may require. Some of these composers and lyricists prefer to work at home when their presence is not required at the Disney Studio. Even when working at home, Disney furnishes these composers and lyricists with such supplies and equipment as might be required by them in connection with their work. Disney also provides necessary coordination between the composer working at home and the Disney Studio, such as picking up music for copying and delivering timing sheets to the composer. Except in those instances where a non-staff composer or lyricist has formed a personal corporation, known in the industry as a "loan-out company," and has chosen to contract with Disney in the name of his loan-out company, it is Disney's standard practice to withhold taxes from the compensation paid non-staff composers and lyricists.

9. The fact that a composer and/or lyricist might choose to contract in the name of his loan-out company does not change the nature of the personal relationship which prevails between Disney and the composer and/or lyricist concerned. In this connection, Paragraph 6 through 8 of my affidavit, above, are equally applicable to a situation where a composer contracts with Disney in his own name or where he contracts with Disney in the name of his loan-out company. None of Disney's staff composers use loan-out companies. The vast majority of the non-staff composers and lyricists who have been employed by Disney have contracted for their employment with Disney in their own name and

not in the name of a loan-out company. Even in those situations where a composer and/or lyricist chooses to contract with Disney in the name of his loan-out company, the contract between Disney and the loan-out company makes it clear that the composer and/or lyricist in question is in fact being employed by Disney and his work is to be performed to Disney's satisfaction.

10. Among the named plaintiffs who have submitted affidavits in support of plaintiffs' motion for summary judgment, only two have been employed by Disney: Jack Elliott and Richard M. Sherman. I have read and am familiar with the affidavits submitted by both individuals. Jack Elliott's most recent employment by Disney totaled approximately 13 months during the period from April, 1966 through January, 1968. He contracted for this employment with Disney in his own name and not in the name of a loan-out company. During the period of this employment, Jack Elliott worked at the Disney Studio and was furnished an office, piano and all necessary music supplies. He filed a W-4 form with Disney and all applicable income taxes were withheld by Disney from his compensation. The most recent employment by Disney of Richard M. Sherman and his brother, Robert B. Sherman, in connection with a theatrical or television motion picture occurred in September and October of 1969. Neither contracted for this employment with Disney in the name of a loan-out company. They were each paid a salary of $800.00 per week, less applicable withholding deductions including income taxes. They were furnished an office at the Disney Studio and such supplies and equipment as they required.

ROBERT K. JACKMAN

Sworn to before me, the 19th day of October, 1973.

Notary Public

OFFICIAL SEAL
DIANE USHER
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires July 10, 1974

AFFIDAVIT OF LIONEL NEWMAN
IN OPPOSITION TO PLAINTIFFS' MOTION

(Reproduced herein at pages 511a through 516a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ELMER BERNSTEIN, et al., : 72 Civil Action
File No. 542
Plaintiffs, : SJR

-against- :

UNIVERSAL PICTURES, INC., et al., :

Defendants. :

- x

AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

STATE OF CALIFORNIA)
: ss.:
COUNTY OF LOS ANGELES)

LIONEL NEWMAN, being duly sworn, deposes and says:

1. I am employed by Twentieth Century-Fox Film Corporation ("TCF") as the creative head of its Music department for both motion pictures and television, and have held that position for approximately ten years. I am the individual who is responsible for negotiating on behalf of TCF with composers and lyricists respecting the terms of their employment. I submit this affidavit in opposition to plaintiffs' motion for summary judgment.

2. At the very outset, I deny that TCF is or has been a party to any agreement or understanding with any other producer of motion pictures or television programs to deprive any composer of his right to negotiate freely with TCF for the ownership of copyrights to material produced by him. Nor did the now expired 1967 collective bargaining agreement ("collective bargaining agreement") between the producers

and the Composers and Lyricists Guild deprive any composer of any such right.

3. Traditionally, composers of music for motion pictures and television produced by or for TCF have been regarded and treated as employees of TCF or a subsidiary or affiliated company.* The collective bargaining agreement specifically provided (Article 13(B)) that the producer, as employer, would be entitled to all rights in the composer's compositions pursuant to such employment, including ownership of the copyright. But the collective bargaining agreement also provided (Article 25) that the composer was free to negotiate and contract for more favorable terms than those provided by the agreement. In fact, all of the individual agreements between TCF and the composers contain terms more favorable to the composers than those set forth in the collective bargaining agreement.

4. For the most part, composers have not sought to negotiate with me for the ownership in the copyrights in the music and/or lyrics prepared for use in TCF's motion pictures or television programs. In those few instances where the issue has been raised, I have negotiated with the composer or his agent in good faith to arrive at a mutually satisfactory solution. Thus, the agreement dated July 7, 1971 with Henry Mancini's corporation required TCF to assign to Mancini's corporation a twenty-five percent (25%) interest in the copyright and in all music publishing rights of the music composed

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* In recent years, some of the composers prefer, apparently for tax reasons, to offer their services through corporations which they own or control. In such instances, TCF "borrows" the composer's services from his corporation through use of so-called borrowing agreements.

for the television series "CADE'S COUNTY". And the agreement dated June 2, 1969 with Burt Bacharach's corporation with respect to the music and lyrics for the motion picture "BUTCH CASSIDY AND THE SUNDANCE KID" requires TCF to assign fifty percent (50%) of the copyright in the music and lyrics to music publishing companies designated and apparently controlled by Bacharach and Hal David, Bacharach's lyricist.

5. The moving affidavits seek to draw a distorted picture of the relationship which exists between TCF and the composers, who create music for motion pictures and television. It may be that composers of music are not required to punch a time clock, or to compose on company premises. But it is completely misleading to suggest that their efforts are not subject to supervision and control by TCF. Indeed, the employment agreements between TCF and its composers customarily contain a clause similar in language or import to the following:

> "Composer's services shall be rendered either alone or in collaboration with others, in such manner as Producer may direct, under the instructions and control, in accordance with the ideas of and at the times and places required by Producer's duly authorized representatives, and in a conscientious, artistic and efficient manner, to Composer's best ability, with loyalty to Producer's organization and with regard to a careful, efficient and economical operation of Producer's business activities; it being understood that such activities involve a matter of art and taste to be exercised by Producer and that Composer's services and the manner of rendition thereof are to be governed entirely by Producer. Producer shall not be deemed to have waived its right to require Composer to render any services herein included by assigning Composer to any particular kind of duties or services."

6. The nature of the supervision and control exercised by TCF can perhaps best be illustrated by a description of the actual process by which music for a motion

picture is composed: after shooting (i.e. photographing) of a film has been completed, a first rough cut of the picture is prepared. Normally, at that point, no music for the picture has yet been written. From the available composers, the producer and I select a composer whose talents and composing style we believe to be suitable for the given picture. After approval by management, the composer is contacted. If he is interested in the project, he and I will view the first rough cut together, together with the producer and/or director, and a representative of management. If, after viewing the picture, the composer is interested, we then proceed to negotiations leading to the composer's employment. Typically such employment agreement requires the composer to compose the necessary music and to conduct the orchestra for necessary recording. If we and the composer believe that the allotted time is insufficient to permit the composer to do all the necessary work himself, TCF will supply additional assistance to the composer at TCF's expense. TCF also supplies the composer with necessary manuscript paper, sketch pads, etc., on request.

The picture is then "spotted", i.e., examined scene by scene, reel by reel, at the TCF studios to determine exactly where music should be played and for what length of time. Determination of the placement, timing, and type of music to be written is discussed between the producer and/or director, the composer, and myself. During the spotting session, there can be, and frequently are, disagreements as to whether there should be music for a particular scene or sequence and, if so, the nature of this music. These disputes are generally resolved by us at the spotting session.

After the spotting session, the music editor assigned to the picture prepares and supplies the composer with so-called "cue sheets" which contain a detailed description of the dialogue and the action of the picture which the music is intended to complement. Working with cue sheets, the composer proceeds to actual composition for the picture.

In general, the composer proceeds first to develop thematic material which the producer and/or director must approve, before allowing the composer to proceed with the actual composition of the score. Even in the course of composition there is substantial and continuing contact between the composer and director or producer, or me. After completion of the score, the composer is required to conduct the orchestra in recording the music on the TCF lot. At the recording session, the producer or director is generally present to make sure that what is recorded meets with his approval and to request any necessary changes. Thus, it may be seen that the composer, despite the artistic aspects of his work, is closely supervised by TCF from beginning to end.

7. Re-recording is an essential function in the production of any motion picture. It is at the re-recording session that music, dialogue and sound effects are combined for the picture. Although composers are generally present at such sessions, final decision as to balance between the three elements rests with the producer or director.

8. Much is made in plaintiffs' affidavits of the fact that most composers do the actual composing of their work at home, rather than at the studio. But this is

basically a matter of composer preference, to which TCF has no objection, and in no way derogates from the composers' status as employees.

LIONEL NEWMAN

Sworn to and subscribed
before me this 15th day
of October, 1973.

Janet Medici

OFFICIAL SEAL
JANET MEDICI
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires Nov. 27, 1976

AFFIDAVIT OF JONIE TAPS
IN OPPOSITION TO PLAINTIFFS' MOTION

(Reproduced herein at pages 518a through 523a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al., Plaintiffs, - against - UNIVERSAL PICTURES, INC., et al., Defendants.	(S.J.R.) 72 Civil 542 AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

STATE OF CALIFORNIA)
: ss.:
COUNTY OF LOS ANGELES)

JONIE TAPS, being duly sworn, deposes and says:

1. From 1945 until September 29, 1973 I was employed by Columbia Pictures Industries, Inc., and its predecessor, Columbia Pictures Corporation; until approximately 1959 as Executive in charge of music publishing and related operations and, since 1959 as head of the Music Department. In the latter capacity I personally handled or supervised the negotiations with all composers who were employed by Columbia in connection with its theatrical motion pictures produced in the United States. This included such of the plaintiffs in this lawsuit who may have been so employed.

2. This affidavit is submitted in opposition to the plaintiffs' motion for partial summary judgment. It should be noted that none of the affidavits attached to the moving papers purports to describe the dealings between any plaintiff and Columbia.

3. Furthermore no facts are presented to support the charge, made in this lawsuit and at least implicit in this motion, that Columbia conspired with anybody to foreclose composers from the right of negotiating for ownership of copyright in their music. The only oblique allusion to such a contention is a reference in Abraham Marcus' affidavit to the producers' (including Columbia) representative's

adherence to the position "that all rights in music and lyrics written for motion pictures and television inherently belong to the producer". It is quite plain from Mr. Marcus' affidavit that he is referring to the employers' alleged stance in the course of collective bargaining with the Composers and Lyricists Guild of America (CLGA) for a "Minimum Basic Agreement".

4. The Minimum Basic Agreement of 1967 is clear regarding the employer-employee relationship of the parties; there is no ambiguity requiring clarification. The plaintiffs and those other composers and lyricists who joined with them, ever since organization of the CLGA, have steadfastly insisted on being regarded and treated individually as employees and collectively as a labor union with all the prerogatives of such an organization including the right to strike and the right to present their grievances to the National Labor Relations Board, both of which rights they have exercised.

5. I state unequivocally, of my own knowledge, that Columbia has never during this time had an agreement or understanding, either within the framework of collective bargaining or otherwise, with any other motion picture or television production company to deny or refuse any composer the right to negotiate with Columbia with respect to the ownership of copyrights in any music created or to be created by them in the course of their relationship with Columbia.

6. I also state unequivocally, of my own knowledge, that none of the several collective bargaining agreements between Columbia and the CLGA was intended to nor did it in fact constitute a denial or refusal of such rights to any composers. As Article 25 of the Minimum Basic Agreement of 1967 clearly stipulates, "nothing herein contained shall prevent the composer from negotiating and contracting with any Producer for better terms for the benefit of such composer than are herein provided". In point of fact composers employed by Columbia more frequently than not do negotiate for and receive better terms than provided in the minimum basic agreement.

7. While it is true that Columbia prefers to retain all rights to the compositions for which it has paid it has agreed in a number of instances to grant individual composers interests in ownership and/or copyrights in excess of the minimums established by the basic agreement. Three such individuals who come to mind are Henry Mancini, Hal David and Burt Bacharach.

8. Several of the affidavits appended to the motion suggest that the relationship between the composer and producer is something other than that of employee and employer. None of these affidavits makes specific reference to Columbia, but my experience in this area prompts a number of observations. Firstly, as I have noted above, it is the composers who individually and organizationally have historically insisted on employee status, to achieve obvious benefits. Their collective bargaining agreements and individual employment agreements stipulate this status. Even in the case of a number of composers who have organized their own controlled employer corporations, their services are obtained by Columbia through the device of a so-called lending agreement with such corporations.

9. Secondly, such affidavits suggest that the large area of freedom which composers enjoy in the performance of their services establishes independence of the employer-employee relationship. This suggestion blandly ignores the highly skilled and artistic nature of the services, the character of which would be inconsistent with the kind of minute supervision and control which might be expected in the case of an assembly line mechanic as the hallmark of such a relationship.

Nothing could be further from reality. In my dealing with composers employed by Columbia, I have always recognized them as artists who cannot and should not be subjected to the kind of constant surveillance and supervision which would necessarily interfere with the quality of their service and defeat Columbia's own objectives.

10. It is therefore a fair observation, in my view, that the nature and extent of supervision and control must be meaningfully

related to the nature of the employment and service. From this it follows and the fact is that composers of music are accorded greater freedom in the discharge of their employee obligations than are other classes of employees. But it does not follow that they are or can be completely free of supervision and control. The usual provisions of our employment agreements with composers, in this connection read:

> "The Composer agrees to perform in good faith and to the best of his ability, in the manner and at the times and places directed by the Corporation, all of the services required of him by the Corporation hereunder; and to comply with all reasonable directions, requests, rules and regulations of the Corporation in connection therewith, whether or not the same involve matters of artistic taste or judgment."
>
> "The Composer agrees that he will not, without the written consent of the Corporation, render or agree to render any services of any kind or nature which would or might conflict or interfere with or prevent the rendition of any services required to be rendered to the Corporation hereunder or during the period between the starting date hereunder and the completion of the Composer's services hereunder."

11. I am personally familiar, as the principal participant, with the specific nature of supervision over composers which prevailed during my tenure in this area. Such supervision and control were not uniform in the case of every composer; it varied according to the individual and the circumstances. Generally, the relationship begins with a discussion of the project followed by a viewing of the first rough cut of a picture (except in the case of a "musical"). At such viewing we may be accompanied by the producer and/or director.

After employment is arranged, the composer together with the producer and/or director and I will convene in a spotting session, viewing the picture, segment by segment, and resolving at what points

and sequences the music should be played. Divergent views are expressed, discussed and resolved.

Usually the composer then prepares and submits a thematic melody and, if this is approved, he goes ahead with the full score. Columbia maintains facilities and equipment for use of its composers on its studio premises. Some composers have utilized these facilities. Most prefer to perform their labors away from the studio. On request, Columbia supplies, at its own expense, a moviola, composition paper and other paraphernalia. Additionally, when the composer insists and if Columbia considers it necessary, it will provide assistance in the persons of orchestrators, lyricists -- again at Columbia's expense.

In the course of composition there often are meetings and discussions with the composer for the exchange of ideas and resolution of questions and problems.

12. Completion of the composition is followed by a recording session at the Columbia studio where the composer is required to conduct the orchestra. I am always present at the recording session and usually also the producer, director or a representative of the producer. Proposed changes are discussed and resolved before final approval.

This is followed by dubbing sessions at which hopefully the final amalgam of music, dialogue and sound is perfected and final producer approval obtained.

13. Consistent with the employer-employee relationship is the fact that many composers (unless they make other provision as, for example, under lending agreements) are paid by payroll checks with the usual deductions prescribed by law. This means, of course, that they have Social Security and Unemployment coverage. It has been brought to my attention that among the plaintiffs so paid and covered have been

Elmer Bernstein, Allan and Marilyn Bergman, Jack Elliott, Jerry Fielding, John Green, Dave Grusin, Arthur Hamilton, Marvin Hamlisch, Shorty Rogers, Walter Scharf and Lalo Schifrin.

Sworn to before me this
day of November, 1973.

JONIE TAPS

OFFICIAL SEAL
GEORGE E. MARSHALL, JR.
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Mar. 23, 1974
Colgems Square, Burbank, CA. 91505

AFFIDAVIT OF HARRY LOJEWSKI
IN OPPOSITION TO PLAINTIFFS' MOTION

(Reproduced herein at pages 525a through 532a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ELMER BERNSTEIN, et al., : 72 Civil Action
File No. 542
Plaintiffs, : SJR

-against- :

UNIVERSAL PICTURES, INC., et al., :

Defendants. :

- x

AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

STATE OF CALIFORNIA)
: ss.:
COUNTY OF LOS ANGELES)

HARRY LOJEWSKI, being duly sworn, deposes and says:

1. I am the music supervisor for television programming at Metro-Goldwyn-Mayer Inc. ("MGM"). I make this affidavit in opposition to plaintiffs' motion for summary judgment.

2. I have been employed by MGM, in the music department of the company, for over 27 years. Prior to my employment by MGM, I was a free-lance musician, and, as such, I had worked at Twentieth Century-Fox and Paramount Pictures. In 1946 I was employed by MGM as a rehearsal pianist, and in 1954 I joined the MGM staff as a music advisor. I have composed and conducted music for MGM and I have recorded music for MGM as a pianist. From 1954 until 1969, in my capacity as music advisor, I

consulted with and advised producers and directors of feature motion pictures and television programs regarding the scores for such features and programs. I also met with the composers to discuss with them the producers' and MGM's ideas as to how individual pictures should be scored. I reviewed and commented on the music which had been composed and I attended many scoring sessions for both feature films and television programs.

3. In 1968 I became music supervisor for television programming and continued to perform many of the same functions I had performed as music advisor. In addition, however, since I became music supervisor I have attended all scoring sessions for television programs and I have participated in selecting composers and in negotiating the terms of their employment by MGM. I have received screen credit as Music Supervisor on the following television series, among others:

DR. KILDARE
MEDICAL CENTER
BRONSON
SHAFT
HAWKINS
YOUNG DR. KILDARE
ADAM'S RIB

4. For many years I have been a member of the American Federation of Musicians, the Composers and Lyricists Guild, BMI and ASCAP.

5. I have reviewed with our counsel the allegations of the complaint and I would like to state categorically that to my knowledge MGM has not been a

party to any agreement or understanding with any other producer of motion pictures or television programs for the purpose of depriving composers and lyricists of their right to negotiate freely with MGM or anyone else regarding the ownership of copyrights to music or lyrics composed by them.

6. As I stated above, I have been a member of the Composers and Lyricists Guild ("CLGA") for a number of years. I have always understood that the agreements entered into by the CLGA and the Motion Picture and Television Producers ("AMPTP") were collective bargaining agreements which resulted from good faith negotiation between representatives of CLGA and the Producers. The "Minimum Basic Agreement" between the Producers and CLGA provided minimum terms that were to be included in agreements with composers and lyricists and also provided that the composers and lyricists were free to negotiate more favorable terms. Obviously, the extent to which a composer or lyricist could obtain more favorable terms than those contained in the "Minimum Basic Agreement" depended on his reputation and importance in the field of music. All composers, however, were free to negotiate all of the terms of their employment with MGM, including the extent to which they would obtain shares in the publishing rights to the music or lyrics which they composed while employed by MGM.

7. Indeed, although the Minimum Basic Agreement provides that the Producer, as employer for hire of the

composer, is entitled to all rights of whatever kind to the music and lyrics, many composers and lyricists have bargained for and obtained publishing rights to their music which they composed for MGM or profit shares in such publishing rights. For example, by an agreement dated June 1, 1970, MGM employed George Tipton, one of the plaintiffs, to compose, conduct and orchestrate the musical score for a television series entitled, THE COURTSHIP OF EDDIE'S FATHER. Pursuant to the contract, MGM paid Mr. Tipton $1,000 per episode for composing, conducting and orchestrating. The contract provided that Mr. Tipton's publisher, Itza Music Publishing Company, would be designated co-publisher with MGM's publisher and that it would receive 50% of the net profits derived from the exploitation of the music. An earlier agreement with Mr. Tipton, dated June 30, 1969, also provided that Mr. Tipton's publisher, then Vine Street Music, would be designated co-publisher of the music to be composed by Mr. Tipton and that it would receive 50% of the net profits from exploitation of the music. Another agreement with Mr. Tipton, dated January 28, 1971, contained the same arrangements with respect to publishing rights.

8. In 1971, MGM made an agreement with Hot Buttered Soul, Ltd., pursuant to which it borrowed the services of Isaac Hayes and others. Pursuant to the agreement, Mr. Hayes composed, conducted and performed the music for MGM's feature motion picture, SHAFT. Pursuant to the agreement, the publishing rights to the music went to a publishing company designated by Mr. Hayes, East Memphis Music, Inc., and certain distribution rights for phonograph records were given to Stax Record Company.

9. Plaintiffs seek to create the impression that they do not perform services for MGM, but that, instead, they proceed, without supervision, to create a finished musical composition which they then deliver and sell to MGM. This impression, however, is inaccurate. In fact, the composers and lyricists are closely supervised and their work is carefully guided and directed by the producer of the program and the music supervisor. This supervision and direction are present in both the selection of the composer and in the use of his services.

10. In employing a composer and lyricist, MGM generally follows this procedure: I will meet with the

producer and/or director of a television program or feature motion picture and we will discuss what type of music we should add to the sound track. I will then suggest the names of a number of composers who I think would be particularly able to produce the desired type of music. We will also decide on a budget for scoring the picture, allocating portions for composers and portions for the instrumentalists who will perform the music during the scoring sessions. In making such budget allocations, we are also necessarily determining the type and size of the orchestra or band which we will use in scoring the picture.

11. Once a list of composers is agreed on, I then contact the agents for the particular composers and ascertain their availability and their price. If I am able to reach agreement with the composer's representative, I notify the MGM Legal Department which prepares an employment agreement containing the particular terms that were negotiated.

12. I will then arrange to meet with the composer and set a date for "spotting" the picture. At the spotting session, the composer and I screen the picture, generally with the producer present. At appropriate places we stop the picture and discuss the amount and kind of music to be inserted in that particular part of the picture. In the case of a television program, there is usually only a single spotting session. In the case of a feature picture, which is necessarily longer and more expensive, the composer may review the picture more than once.

13. Many composers bring tape recorders to the spotting sessions so that they can record the comments and suggestions of the producer and the music supervisor, as well as some of the dialogue from the sound track, in order to compose music which matches the producer's concept of the picture. Sometimes, composers will write several themes for a single picture or program so that the producer can choose the one he prefers and, frequently, during the progress of the work, the composer will call me or the producer to discuss concepts or to try out possible themes.

14. Once the composer has written the music, he gives it to MGM for copying and, if he has not already done so, may play some of the thematic material for the producer, who may suggest changes. As I stated above, I always attend the scoring sessions for television programs and often the producer attends as well, to be sure that the way in which the music is recorded fits his concept of the program. Thus, from the beginning of the composing process to the end, the producer and I closely guide and direct the composer in his work.

15. This close guidance and direction have continued in spite of the fact that, during the last few years, composers have chosen to perform their work at home, rather than to use studio facilities. Until a few years ago, most of the composers' work was done on MGM's premises. MGM still provides composers with music studios equipped

with piano, metronome and timing devices and gives them access to projection rooms. MGM also provides manuscript paper, which most composers use, including those who work at home. Some composers, for example, Johnny Pate, who composes the music for SHAFT, still use the MGM facilities. John Parker, one of the plaintiffs who submitted an affidavit on this motion, did use MGM studio facilities in former years to compose his music. Several years ago, however, he purchased a home in the suburbs and, to avoid fighting traffic on the freeways, began to do his composing work at home.

16. The fact that the composers sometimes work at home, however, and are not subject to rigid 9 A.M. to 5 P.M. time schedules does not diminish MGM's right to supervise their work, to insist on changes and to be sure that, in the final analysis, the music reflects the producer's concept of the picture or program.

HARRY LOJEWSKI

Sworn to before me this
15th day of November, 1973.

OFFICIAL SEAL
INEZ WHELAN
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Feb. 12, 1974

AFFIDAVIT OF JESSE KAYE
IN OPPOSITION TO PLAINTIFFS' MOTION

(Reproduced herein at pages 534a through 535a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ELMER BERNSTEIN, et al., : 72 Civil Action
File No. 542
Plaintiffs, : SJR

-against- :

UNIVERSAL PICTURES, INC., et al., :

Defendants. :

- x

AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

STATE OF CALIFORNIA)
: ss.:
COUNTY OF LOS ANGELES)

JESSE KAYE, being duly sworn, deposes and says:

1. I was employed by Metro-Goldwyn-Mayer Inc. ("MGM") from 1946, when I was employed as West Coast head of MGM Records, until my retirement in September of this year. In approximately 1955 I was appointed Vice President in charge of MGM Records West Coast operations. In approximately 1969 I became Supervisor of the Music Department for MGM features. I make this affidavit in opposition to plaintiffs' motion for summary judgment.

2. I have read the affidavit of Harry Lojewski, MGM's Music Supervisor for Television, sworn to November 15, 1973 and, on the basis of my own experience in supervising the composition and production of music

for feature motion pictures, I believe that Mr. Lojewski's description of the process by which music is produced for television films is also accurate for feature films, except that in feature films the producer and director participate in supervising the production of music to an even greater extent and over a longer period of time than in television films.

3. In addition, however, to the examples mentioned by Mr. Lojewski of instances in which composers received greater publication rights than those provided for in the Producers-CLGA "Minimum Basic Agreement", I would like to add the following one: By agreement dated May 14, 1973, Bob Dylan agreed to give MGM certain rights to the musical score which he had composed for the photoplay PAT GARRETT AND BILLY THE KID. MGM obtained only the "synchronization rights" for the musical score, i.e., the right to use the music in the film. Mr. Dylan retained all other rights and MGM relinquished to him control of the soundtrack album, reserving only the right to receive a royalty from the sale of phonograph records. Except for the rights specifically granted to MGM, Mr. Dylan retained all other rights to the music, including copyright.

JESSE KAYE

Sworn to before me this
16th day of November, 1973.

OFFICIAL SEAL
INEZ WHELAN
NOTARY PUBLIC CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Feb 17, 1975

AFFIDAVIT OF PETER D. KNECHT
IN OPPOSITION TO PLAINTIFFS' MOTION

(Reproduced herein at pages 537a through 541a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al.,

Plaintiffs,

vs.

UNIVERSAL PICTURES, INC., et al.,

Defendants.

NO. 72 Civ 542

AFFIDAVIT OF PETER D. KNECHT IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND A PRELIMINARY INJUNCTION

COUNTY OF LOS ANGELES)
) SS.
STATE OF CALIFORNIA)

PETER D. KNECHT, being first duly sworn, deposes and says:

1. I am an Assistant Secretary of Warner Bros. Inc., a Delaware corporation, having held said office since at least 1967. I am also an attorney-at-law, duly licensed to practice my profession in all of the courts of the State of California. For the past eighteen (18) years I have been a member of, and am now the head of, the studio Legal Department of said Warner Bros. Inc. and its predecessor companies (herein "Warner Bros.") located at 4000 Warner Boulevard, Burbank, California. I submit this Affidavit in opposition to Plaintiffs' Motion for Summary Judgment and a Preliminary Injunction.

2. During the period of my employment by Warner Bros., I have been very closely associated with the preparation of contracts for the services of composers and lyricists in connection with motion pictures produced by or for Warner Bros. All such contracts have for approximately ten (10) years last

past been prepared either by me or under my direct supervision. During all of this period, I have worked very closely with those persons who have, from time to time, been head of the Music Department of Warner Bros. Inc.

3. I also took an active part in the preparation of portions of the Collective Bargaining Agreements between Warner Bros. Pictures Inc. and other motion picture companies and The Composers and Lyricists Guild of America, Inc., details of which are, I am informed, set forth in Charles Boren's Affidavit submitted in opposition to the instant motion.

4. During all of the period referred to above, I have not been aware of any agreement or understanding between Warner Bros. and any other person, firm or corporation, whether affiliated with Warner Bros. or not, under which composers and lyricists, individually or as a group, were, or were to be, deprived of their right to negotiate freely for the ownership of copyrights in and to music written and composed by them.

5. There have been instances in the past in which the composer has demanded and received copyright concessions such as the right to exploit material not used in the motion picture as released; for example, contracts with Dimitri Tiomkin have usually contained such provisions. For another example, Henry Mancini has demanded and received for a publishing company designated by him partial ownership of the copyrights in music composed by him. In all of these instances the relationship of employer and employee invariably prevailed.

6. The matters referred to in paragraph 5 above are examples of the fact that certain composers have been able to obtain better terms from Warner Bros. than those set forth in the Collective Bargaining Agreements between the Composers and Lyricists Guild of America and the member companies of the Association of Motion Picture and Television Producers, Inc. In addition, the minimum

salaries set forth in said Collective Bargaining Agreements have been exceeded in practically every case where Warner Bros. has engaged the services of a composer or lyricist.

7. It has been my experience that in practically every case where an employment agreement (whether or not in the form of a so-called "loanout agreement") has been entered into by Warner Bros., the composer or corporate entity involved is entitled to receive (in addition to substantial salary payments) substantial royalties resulting from the exploitation of the music. I have been informed by the Accounting Department of Warner Bros. Music Division that since January 1, 1968, approximately $172,000 has been paid out in royalties to the 30 named plaintiffs who were employed by Warner Bros.

In addition to the substantial royalties which have been paid to those plaintiffs, very substantial additional sums have been paid to the plaintiffs by various performing rights societies to which they belong, including ASCAP and BMI. In general, this amounts to 50% of the Society's net collections of performance fees.

8. It has been my experience that in practically every case where original music is required for a Warner Bros. motion picture or television film (as distinguished from previously written compositions), such music is obtained by entering into a direct employment contract for the services of the composers and/or lyricists involved. Sometimes the employment agreement is in the form of a so-called "loanout agreement" to accommodate a composer who wishes to channel his income through a corporate entity owned or controlled by him. On occasion, where the picture is produced by an outside producer for distribution by Warner Bros., the employment agreement (whether or not in the form of a so-called "loanout agreement) is sometimes executed by the outside producer rather than by Warner Bros.

9. There is attached hereto marked Exhibit "A" a true copy of an Agreement dated November 28, 1963, between Warner Bros and Elmer Bernstein, pursuant to which Warner Bros. employed Bernstein to write the musical score for a motion picture entitled "I LOVE YOU, ALICE B. TOKLAS". It will be noted that said contract clearly provides that Bernstein is an employee (see paragraph 1), and is to render his services "as instructed by the Producer in all matters, including those involving artistic taste and judgment." (See paragraph 5.)

10. Exhibit "A" is illustrative of composers' employment contracts with Warner Bros. It is plain that not only is the relationship of employe and employee present in every case, but detailed provisions requiring the employee to comply with his instructions and work under the supervision and control of the producer are clearly set forth. To the best of my knowledge, information and belief, these provisions have been followed literally in the actual day-to-day operation of the production of motion pictures.

11. I have ascertained from the Accounting Department of Warner Bros. Inc. that the following individuals who are named plaintiffs in this action have, according to their records, been employed by Warner Bros., and payroll deductions for income taxes, social security and similar deductions required of employees have been made.

JEFF ALEXANDER
ALAN BERGMAN
ELMER BERNSTEIN
RAY EVANS
PERCY FAITH
NORMAN GIMBEL
DAVE GRUSIN
JAY LIVINGSTON
HENRY MANCINI
RICHARD MARKOWITZ
VICTOR MIZZY
NELSON RIDDLE
DAVID ROSE
LEONARD ROSENMAN
BORIS C. SCHIFRIN
FRED STEINER
DUANE L. TATRO

12. It has been my experience that in practically every case Warner Bros. supplies all instrumental musicians, copyists, arrangers and orchestrators, as well as other supplies, and frequently provides a room equipped with a piano in which to work. Moreover, Warner Bros. informs the composer in detail of exactly what music is required, sets up meetings and conferences at times convenient to the individual producer and director of the picture, and otherwise supervises and controls the activities of the composer, including not only the end result to be obtained, but also the minutest details of the work to be performed.

Peter D. Knecht

PETER D. KNECHT

Subscribed and sworn to before me
this 20th day of November, 1973.

Joan M. Cowan

NOTARY PUBLIC

OFFICIAL SEAL
JOAN M. COWAN
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires Dec. 5, 1977

EXHIBIT A - AGREEMENT DATED NOVEMBER 28, 1969 -
ANNEXED TO AFFIDAVIT OF PETER D. KNECHT

(Reproduced herein at pages 543a through 557a)

Rev. 12/11/67

Composer's Agreement

Dated November 28, 1967

Name of Composer ELMER BERNSTEIN

Address c/o General Artists Corporation
9025 Wilshire Blvd., Beverly Hills, California

1. Employment and Photoplay: WARNER BROS.-SEVEN ARTS, INC. a Delaware corporation (herein called "Producer"), hereby employs and engages Composer to write, compose, arrange, adapt and conduct the recording of the musical score of the motion picture now entitled "I LOVE YOU, ALICE B. TOKLAS" (herein called the "photoplay"), and the trailer thereof, upon and subject to the terms and conditions hereinafter set forth. Composer hereby accepts such employment and agrees to keep and perform all of his duties, obligations, covenants and agreements hereunder.

2. Term of Employment: The term of Composer's employment hereunder shall commence *, and shall, except as herein provided, continue thereafter for the period necessary to complete all services required by Producer from Composer in connection with the photoplay.

* on a date to be designated by Producer to Composer by not less than 10 days oral or written notice

Started 4-15-68 (See Memo dated 4-15-68 from S. Burke.)

3. Compensation: Provided Composer shall faithfully and completely keep and perform each and every covenant and condition of this agreement on his part to be kept and performed, Producer shall pay to Composer, as compensation for his services hereunder and all rights herein granted and agreed to be granted (except as provided in paragraph 11 hereof), the sum of $25,000 payable as follows: $2,500 thereof on the Wednesday following the first Saturday after commencement of Composer's employment hereunder and a similar installment of $2,500 on each of the next following 9 Wednesdays. Should Composer render services hereunder in connection with the motion picture subsequent to the expiration of 10 weeks from the starting date, Composer shall be compensated therefor at the rate of $2,500 per week prorated on the basis of a 5-day week.

Composer warrants that he is a member of ASCAP.

EXHIBIT "A"

12-18-67. BMI
2 copies - ASCAP
1 copy - AFM
1 " Sacbk
1 " - Music Dept

4. Credit: Provided Composer shall faithfully and completely keep and perform each and every covenant and condition of this agreement on his part to be kept and performed and the musical score of the photoplay as released shall have been principally composed by Composer, Producer agrees to accord Composer credit on all positive prints of the photoplay, which credit shall appear on a separate title card and shall read substantially as follows:

"MUSIC - ELMER BERNSTEIN"

Producer further agrees to accord Composer credit in all paid advertising issued by Producer or under its direct control in connection with the photoplay.

The provisions of this paragraph shall not apply to group, list or teaser advertising or publicity, nor to special advertising or publicity relating to the photoplay itself or to the title thereof, nor with respect to the use by Producer of excerpts or clips from said photoplay, nor to the story upon which said photoplay is based, any author of such story, any member of the cast, the supervisor, the director, or other personnel concerned with the production of said photoplay, or similar matters, nor to trailers or other advertising on the screen, nor to radio or television advertising, nor to so-called commercial tie-ups or by-products, nor to any publication or fictionization of the story, screenplay, or literary material upon which said photoplay is based, nor to institutional or other advertising or publicity not relating primarily to said photoplay, nor to advertisements of 8-column inches in size or less. No casual or inadvertent failure to comply with the provisions of this paragraph shall constitute a breach by Producer of this agreement.

5. Services: Composer agrees: To comply promptly and faithfully with all requirements, directions and requests and with all rules and regulations made by Producer in connection with the conduct of its business; to perform and render his services conscientiously and to the full limit of his ability and as instructed by Producer in all matters, including those involving artistic taste and judgment; and to perform and render such services during his employment hereunder whenever and wherever and as often as Producer may request or deem necessary or convenient; but there shall be no obligation on Producer to cause or allow Composer to perform any services hereunder or to actually utilize any of the results or proceeds of Composer's services, or to include all or any of Composer's music in the photoplay, or to produce, release or continue the distribution of the photoplay.

Without limiting the generality of the foregoing, Composer will render his services hereunder in connection with musical compositions of his own, as well as compositions furnished by Producer, and will perform all services or duties customarily performed in the motion picture industry by a composer, scorer, conductor, arranger and adapter with respect to the photoplay and the trailer thereof, but Composer shall not be required to write any lyrics or literary material hereunder. Producer shall have the right to change the number and character of musical compositions, production numbers, special material, etc. required of Composer hereunder, and require Composer to write, compose and/or adapt other musical compositions, production numbers, special material, etc. in lieu thereof. Producer shall also have the right to require Composer to make such changes, modifications or additions to any and all musical compositions, production numbers or special material composed by Composer hereunder as may be required or desired by Producer, and Producer may require Composer to write and compose musical compositions, production numbers, special material, etc., in addition to those originally outlined by Producer to Composer; and Producer may employ or engage other persons as composers, arrangers, orchestrators, copyists, adapters or conductors in connection with the photoplay at any time.

In the event Composer does not complete his services in connection with the trailer of the photoplay during the term hereof, Composer agrees after the termination hereof and at such time or times as may be designated by Producer, subject to the reasonable convenience of Composer, to return to the studio of Producer for the purpose of writing and composing such musical compositions as may be required for such trailer and Producer shall not be obligated to pay Composer any compensation for such services in addition to that elsewhere herein provided for.

During Composer's employment hereunder and at all other times when the same will not interfere with other employment of Composer, Composer further agrees to render his services without compensation, in addition to that elsewhere herein provided for, in connection with publicity interviews, poster art, still photographs and similar matters for the purpose of advertising and exploiting the photoplay.

Should Composer be required to perform any services hereunder at any place other than Los Angeles and/or Burbank, California, or their environs, Producer shall furnish Composer with first-class transportation to the extent reasonably available, and shall pay all necessary first-class living and traveling expenses, including hotel bills and other charges for board and lodging, reasonably incurred by Composer during the continuance of such services elsewhere.

Composer shall deliver to Producer's Music Department all original manuscripts, conductor's score, instrumental and vocal parts and other music of every kind prepared by or under the supervision of Composer hereunder and in his possession or under his control. Composer will also perform all services required of him in connection with the preparation of the cue sheet of the photoplay.

6. Morals Clause: From the date hereof and continuing throughout the term hereof and the production and distribution of the photoplay, Composer agrees to conduct himself with due regard to public conventions and morals and not to do or commit any act or thing that will tend to degrade him in society or bring him into public hatred, contempt, scorn or ridicule, or that will tend to shock, insult or offend the community, or ridicule public morals or decency, or prejudice Producer or the motion picture or entertainment industries in general, and that he will not do or commit any act or thing that will tend to injure his capacity to at all times fully comply with and perform all of the terms and conditions of this agreement, or which will tend to injure his physical or mental qualities. In the event of any breach of the provisions of this paragraph, or in the event the conditions referred to in this paragraph occur as a result of any action or conduct of Composer, whether before or during the term of this agreement, Producer may, at any time within 30 days thereafter, terminate the employment of Composer. If any such conditions occur or continue after completion of production of the photoplay, Producer shall thereafter be relieved of its obligations under paragraph 4 hereof.

7. Exclusivity: Composer agrees that he will, during the term hereof (including any period when his services and/or compensation may be suspended under paragraphs 12, 13 or 14 hereof), render the services herein provided for solely and exclusively for and to Producer.

Composer agrees not to render his services as a conductor in connection with phonograph records containing music composed, arranged or adapted by Composer hereunder during the period of 5 years from the completion of the recording of the music sound track of the photoplay without first obtaining Producer's written consent.

8. Rights of Producer: Composer acknowledges that Producer, as Composer's employer for hire, is and shall be the owner and proprietor, exclusively and perpetually, of all now or hereafter existing rights of every kind and character whatsoever, whether or not such rights are now known, recognized or contemplated, and the complete, unconditional and unencumbered title throughout the world in and to:

his services and performances pursuant to this agreement; any and all results and proceeds thereof; any and all sound records and mechanical and other reproductions containing the results and proceeds of such services; any and all music, lyrics, titles, incidents, dialogue, characters, action, gags, material, ideas, inventions and other literary, dramatic and musical material heretofore or hereafter written, composed, submitted, added, improvised, interpolated and invented by Composer in connection with the photoplay. The rights herein granted to Producer include, without limitation, the complete, unencumbered, exclusive and perpetual right throughout the world to exhibit, record, reproduce, broadcast, televise, transmit, publish, copy, print, reprint, vend, sell, distribute, perform and use for any purpose, in any manner, and by any means, whether or not now known, invented, used or contemplated, and whether separately or in synchronism or timed relation with the photoplay or trailers or clips thereof, or any other photoplay, or otherwise, all or any part of the matters and things referred to in this paragraph 8. Producer may add to, subtract from, arrange, re-arrange, revise and adapt all such material and the photoplay in any manner and Composer hereby waives the "moral rights" of authors, as said term is commonly understood throughout the world. All such material and the world-wide copyright therein (including all renewals and extensions of such copyright) shall automatically be and become the property of Producer, which shall be and be deemed to be the composer and author thereof, the Composer acting entirely as Producer's employee for hire. Composer will, at the request of Producer, execute and deliver to Producer in connection with all such material a certificate or certificates, in Producer's usual form, certifying that all such material was written or composed by him for Producer as an employee for hire, pursuant to this agreement, and that Producer is the composer and author thereof and has the right to make such changes therein and such use thereof as Producer, as such composer and author, may determine.

9. Publicity Rights: Without limiting the provisions of paragraph 8 hereof, Composer hereby grants to Producer the exclusive and perpetual right to issue and authorize publicity concerning him and to use, reproduce, transmit, broadcast, exploit, publicize, exhibit and control his name, photographs, likeness, voice and other sound effects, as well as recordings, transcriptions, films and other reproductions thereof in any manner, but only in connection with Composer's services hereunder and the distribution, exhibition, advertising and exploitation of the photoplay. Such rights may also be exercised by Producer in connection with: the publication or fictionization of the story, screenplay or other literary material upon which the photoplay is based; Producer's institutional advertising; "by-products"; and so-called "commercial tie-ups" advertising or publicizing any products, commodities or services and which refer to the photoplay or Composer's employment hereunder; provided, however, that Producer will not expressly represent Composer as using or endorsing any product, commodity or service without Composer's written consent.

10. Warranties: Composer represents, warrants and agrees that he is free to enter into this agreement and is not subject to any obligations or disability which will or might prevent him from or interfere with his fully keeping and performing all of the covenants and conditions to be kept and performed by him hereunder; that he has not made and will not make any grant or assignment which will or might conflict with or impair the complete enjoyment of the rights and privileges granted to Producer hereunder; that during the entire term hereof, during such period or periods as it may be lawful for Producer to require Composer so to do, Composer will, at his own expense, remain or become and remain a member in good standing of the properly designated labor organization or labor organizations, if any (as defined and determined under the applicable law), representing persons rendering services of the type and character that are required to be rendered by Composer hereunder; and that all music, lyrics, titles, incidents, dialogue, characters, action, gags, material, ideas, inventions and other literary, dramatic and musical material referred to in paragraph 8 hereof (but not material assigned to Composer by Producer) shall be wholly original with Composer or shall be in the public domain throughout the world, and shall not infringe upon or violate any copyright or on the right of privacy of any person, shall not constitute a libel or slander of any person, and shall not infringe upon or violate any other right of any person. Composer will indemnify Producer against, and save and hold Producer harmless of and from, all claims, demands, actions, liability, costs and expenses arising out of any breach or alleged breach of the foregoing representations and warranties.

11. Transfers and Assignments; Publication; Royalties: All rights and privileges granted to Producer hereunder, and all representations and warranties made by Composer hereunder, shall inure not only to Producer's benefit, but also to the benefit of all persons who may hereafter lawfully acquire any right to distribute, sell, license, transmit, exhibit, advertise and/or exploit Composer's music or the photoplay or trailers or clips thereof; it being expressly agreed that the photoplay may be released, sold and/or distributed under any company or trade name, brand, producing mark, trademark or characteristic desired by Producer.

Producer specifically reserves and retains, and Composer specifically agrees that Producer shall have, the right to sell, transfer, assign, license, or otherwise dispose of the photoplay, and all or any part of its rights with respect to the photoplay and the advertising and exploitation thereof, and all or any part of its rights in and to the results and proceeds of Composer's services hereunder to any person, specifically including the right to assign for publication any and all musical compositions, arrangements and adaptations written or composed by Composer hereunder, and the right to nominate or designate the actual publisher thereof (which may, but need not, be a person, firm or corporation owned or controlled by Producer) and administrator of the various rights under copyrights, subject to the payment of royalties computed and determined in the manner set forth in "Exhibit A" attached hereto and by this reference made a part hereof.

In this connection, Composer specifically agrees that Producer may, when assigning such rights to a publisher or to a distributor of the photoplay, reserve unto itself and its affiliated subsidiaries and successors, free from payment of any fees or royalties whatsoever, the non-exclusive and non-assignable world-wide synchronization rights in and to such musical compositions, arrangements and adaptations necessary or incidental to the production and manufacture of "motion pictures" (including all television films, video tape films or any films produced electronically) by any and all methods and means throughout the world, together with the non-exclusive rights in the United States for theatrical performances and theatrical exhibition of said "motion pictures". Outside of the United States, where there is no performing rights society of which the publisher or any performing rights society of which it is a member is an affiliate, Producer may also reserve unto itself and its affiliated subsidiaries and successors, free from payment of any fees or royalties whatsoever, the non-exclusive right to perform said musical compositions, arrangements and adaptations in connection with the exhibition of said "motion pictures". Should Producer assign such rights to a distributor of the photoplay, such distributor may, when assigning such rights to a publisher, reserve equivalent rights unto itself.

Producer shall also have the right to sell, assign or otherwise dispose of (herein called "assign") its rights to require Composer to render services hereunder to any parent, subsidiary or affiliated corporation of Producer, or to any corporation with or into which Producer may merge or consolidate or to any person, firm or corporation succeeding to all or a substantial portion of Producer's assets used in connection with the production of motion pictures, or to any "major" producer of motion pictures, or any "independent" producer of motion pictures having a "major" release, as these terms are commonly understood in the motion picture industry, and specifically including any person who produces the photoplay for release and distribution by Producer. If Producer assigns Composer's services as aforesaid, Composer shall render such services as may be required under the terms hereof to the assignee and the assignee shall be entitled to such rights in and to the results and proceeds of Composer's services as Producer would have hereunder and agrees to grant to the assignee. Producer may make such arrangements with any assignee for compensation for assigning the services of Composer as Producer may determine and Producer shall be entitled to retain all moneys and other consideration received from any such assignee.

12. Incapacity: If Composer is materially incapacitated from fully performing and complying with his obligations hereunder by reason of illness, accident or mental or physical disability, or if Composer is prevented from rendering services hereunder by reason of any statute, law, ordinance, regulation, order, subpoena, judgment or decree, including the arrest or other detention of Composer by any governmental authority (all of which events are herein called "incapacity"), Producer may suspend the services and compensation of Composer during the continuance of such incapacity; and, in the event of the continuance of such incapacity for a period or aggregate of periods of 3 weeks during Composer's employment, Producer may terminate Composer's employment hereunder. If Composer suffers or asserts any incapacity, or if Producer

elieves that Composer is or will be incapacitated, Producer shall have the right o investigate the nature and extent of such incapacity by its own physician or therwise, and Composer agrees to lend his assistance to any such investigation nd agrees to submit to any and all physical examinations requested by Producer.

13. Force Majeure: If the preparation, production or completion of otion pictures by Producer shall be prevented or materially hampered or interupted by reason of any fire, flood, explosion, earthquake, epidemic, casualty, trike, lockout, boycott, labor controversy, riot, civil disturbance, accident, ct of God, war (whether or not officially declared), embargo or delay of a ommon carrier, or by any present or future municipal, county, state or national statute, ordinance, law, regulation or order, or by any executive or judicial order, whether municipal, county, state or national, or by any other legally constituted authority (whether or not any of the foregoing shall be constitutional), or by any other cause or causes of the same or other kind or character beyond the control of Producer, or by reason of Producer's inability to obtain material, transportation, power or other essential commodity required in the conduct of its business, or if the production of the photoplay shall be suspended, interrupted or postponed by any such cause (the continuance of any such event being hereinafter designated as the "casualty period"), Producer may suspend the services and compensation of Composer during the continuance of such casualty period.

If any casualty period should continue for a period in excess of 8 weeks, either Composer or Producer may terminate Composer's employment hereunder; provided, however, that should Composer desire to terminate his employment, he shall serve written notice of such desire upon Producer, and if Producer should resume payment of Composer's compensation hereunder commencing as of not later than 1 week after receipt of such notice from Composer, Composer's employment hereunder shall not be terminated, but shall continue in full force and effect; provided, however, that Producer may, at any time during the continuance of the casualty period in effect when payment of such compensation was resumed, terminate Composer's employment hereunder. If, however, Producer should not resume the payment of such compensation as aforesaid, the employment of Composer hereunder shall be terminated.

If, at any time before the commencement of Composer's employment, the preparation of the photoplay is suspended, interrupted or postponed by reason of any of the events enumerated in this paragraph, Producer may postpone the commencement of Composer's employment for a period equivalent to the delay occasioned by such event, not in excess of 3 weeks.

14. Defaults: If Composer fails, refuses or neglects to perform his services hereunder, other than by reason of incapacity as defined in paragraph 12 (any such ever being hereinafter referred to as "default"), Producer may suspend Composer's services and compensation during the period commencing on the commencement of any such default and continuing thereafter until Composer personally reports to Producer ready, able and willing to resume his services hereunder, and for such additional period, not in excess of 6 weeks, as may be necessary to enable Producer to prepare for the actual utilization of Composer's services hereunder.

In the event of any default by Composer, Producer may, at any time not later than the expiration of the period during which it may suspend Composer's services and compensation, terminate Composer's employment hereunder. Such termination shall be without prejudice to Producer's rights against Composer under any other provision hereof or at law or in equity.

If Composer refuses or states, either personally or through his agent, that he will refuse to comply with his obligations hereunder, either generally or with respect to any particular matter, such refusal or statement may be treated by Producer as an immediate failure, refusal and neglect within the meaning of this paragraph 14, even though the time for performance of the obligation or obligations involved has not then arrived. Producer may at any time request Composer to confirm in writing his intention and willingness to comply with his obligations hereunder, either generally or with respect to any particular matter. If, within 48 hours (exclusive of Saturdays, Sundays and holidays) after the making of any such request, Composer fails to deliver such confirmation to Producer, such failure may be treated by Producer as an immediate failure, refusal and neglect on the part of Composer to perform his obligations hereunder with all of the results and effects more particularly set forth in this paragraph 14, even though the time for performance of the particular obligation or obligations involved has not then arrived.

It is acknowledged that the services of Composer hereunder and the rights and privileges granted to Producer under the terms hereof are of a special, unique an intellectual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, and that a breac by Composer of any provision of this agreement will cause Producer great and irrepara injury and damage. Accordingly, Composer hereby expressly agrees that Producer shall be entitled to the remedies of injunction, specific performance and other equitable relief to prevent a breach of this agreement by Composer. This provision shall not, however, be construed as a waiver of any rights which Producer may have in the premis for damages or otherwise. It is specifically understood and agreed that the bringing of any suit, action or proceeding by Producer against Composer shall not be construe as an abandonment by Producer of any other remedy which it may have hereunder or as termination of this agreement or of Composer's employment hereunder, but this agreement shall in all respects continue in full force and effect unless and until Produc shall have elected to exercise a right of termination herein provided for, or until

omposer's employment or this agreement shall expire or be terminated by lapse of ime, mutual consent or by operation of law. The provisions hereof shall not be onstrued as a penalty upon Composer, it being agreed that said provisions are easonable and necessary because of the unique nature and exigencies of Producer's usiness, and Composer specifically recognizes that the periods herein specified epresent the necessary minimum for the reasonable protection of Producer in connec ion with its normal production activities.

15. Extension Rights, etc: For the purpose of computing any periods of time referred to in paragraph 2 hereof, any or all periods during which Producer suspends Composer's compensation under paragraph 12, 13 or 14 may, at Producer's option, be excluded and such periods extended accordingly. If Producer shall have paid Composer compensation during any period when it was not obligated to pay such compensation under any provision of paragraph 12, 13 or 14, Producer may withhold from any other compensation otherwise payable to Composer hereunder such amount as Producer was not obligated to pay Composer by reason of the provisions of said paragraph 12, 13 or 14. If Composer's employment is terminated under any of said provisions, or by operation of law or mutual agreement, the payment of the compensation accruing to Composer prior to the effective date of such termination shall be payment in full of Composer hereunder, subject only to payment of royalties as provided for in paragraph 11 hereof.

16. Payroll Deductions, etc: Composer hereby appoints and authorizes Motion Picture Relief Fund of America, Inc. as Composer's attorney-in-fact to collect an amount equal to 1% of all compensation now or hereafter due or payable to Composer from Producer.

Producer may deduct and withhold from Composer's compensation all amounts to be deducted or withheld pursuant to any present or future statute, law, ordinance, regulation, order, writ, judgment or decree requiring the withholding of compensation. Producer may offset against any compensation now or hereafter payable to Composer the amount of any fixed and ascertained liability of Composer to Producer, whether such liability arises under this agreement or otherwise, and whether or not the same has been reduced to judgment. Producer may also deduct and withhold from Composer's compensation, to the extent permitted by law, any dues, fees or assessments payable by Composer to any labor organization referred to in paragraph 10 hereof, provided the amounts so deducted and withheld are remitted to such labor organization.

If the compensation herein provided for shall exceed the amount permitted by any future law, governmental order or regulation, such stated compensation shall be reduced while such limitation is in effect to the amount which is permitted; and the payment of such reduced compensation shall be deemed to constitute full performance by Producer of its obligations hereunder with respect to compensation for such period.

17. Miscellaneous: No waiver by Producer of any breach of this agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provision hereof. Each and all of the several rights, remedies and options of Producer hereunder shall be construed as cumulative and no one of them as exclusive of the others or of any right, remedy or priority allowed by law or in equity. Time is of the essence of this agreement.

This agreement shall be governed by and construed under and in accordance with the laws of the State of California, but shall be considered operative and in full force and effect throughout the world. Nothing herein contained shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this agreement and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the provision of this agreement affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements.

It is expressly understood and agreed that the expiration or termination of this agreement or of Composer's employment hereunder, whether by lapse of time, mutual consent, operation of law, or for any other reason whatsoever, shall not affect the ownership by Producer of the property granted to Producer hereunder or alter any of Producer's rights and privileges or any warranty or undertaking on the part of Composer hereunder.

18. Notices: Any rights of election herein granted to Producer or Composer may be exercised, unless herein otherwise specifically provided, by notice, oral or written, delivered by any means of communication whatsoever. Any notice given by Producer to Composer may be given to Composer personally or to his duly authorized agent. Any written notice which Producer is required or may desire to give Composer shall be given by addressing the same to Composer at Composer's address shown on the face hereof, or at such other place in Los Angeles County as may be designated in writing by Composer, or at the address of Composer last known to Producer, or in the absence of any designated or known address, to Composer, c/o General Delivery, Los Angeles, California; and when same shall be deposited, so addressed, postage prepaid, in the United States mail, and/or when Producer shall have delivered the same, so addressed, to a telegraph or cable company, toll prepaid, and/or when Producer shall have delivered the same to Composer personally or to his duly authorized agent, Producer shall be deemed to have duly given such notice.

All written notices which Composer is required or may desire to give to Producer hereunder shall be given by addressing the same to Producer, c/o Legal Department, 4000 Warner Boulevard, Burbank, California. Such notices shall be deemed duly given if given by mail, telegraph or cable in the manner hereinabove set forth.

19. Definitions: As used herein, the following terms shall, unless the ontext clearly provides to the contrary, have the following meanings:

"Photoplay", "motion picture", or their equivalent, shall be deemed to nclude, but shall not be limited to, motion pictures and trailers and clips thereof f every kind and character whatsoever, and whether for entertainment, educational, ommercial, industrial or other purposes, produced and/or exhibited with and/or ithout sound devices and voice recording devices, reproducing and/or transmitting evices, radio devices, television devices and any or all other improvements and evices, any of which are now, or may hereafter be, used in connection with the roduction and/or exhibition and/or transmission of any present or future kind of otion picture production.

"Radio", "television", or similar terms, include the present as well s future developments of the radio and television arts and industries and include roadcasting and transmission by so-called live talent, as well as electrical ranscription, film, tape or other mechanical reproduction of any kind.

"Person" includes any association, organization, partnership, business rust or corporation, as well as natural persons.

Terms used herein in the masculine gender include the feminine and euter genders, and terms used in the singular number include the plural number, as the context may require.

20. Entire Agreement: This agreement cancels and supersedes all prior agreements and understandings between the parties relating to the photoplay, and contains all of the terms, conditions and promises of the parties hereto in the premises; and no modification of any provision hereof shall be valid or binding unless in writing. No officer, employee or representative of Producer has any authority to make any representation or promise not contained in this agreement, and Composer expressly agrees that he has not executed this agreement in reliance on any such representation or promise.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this agreement as of the date first above written.

WARNER BROS.-SEVEN ARTS, INC.

By _____
Its Vice President (Producer)

_____
ELMER BERNSTEIN (Composer)

ROYALTY SCHEDULE

The following royalties shall cover entire compositions, words and music, and shall be payable jointly to all of the authors and composers of each musical composition of which Composer's work shall form a part, such royalties being payable one-half to the Composer or composers, jointly, of the music, and one-half to the author or authors, jointly, of the lyrics, if any:

(a) In respect of regular piano copies sold and paid for in the United States and Canada, 5¢ per copy.

(b) 10% of the net wholesale selling price of all other editions (after trade discounts, if any) of each copy sold and paid for in the United States.

(c) (i) If the composition or any part thereof is included in any song book, song sheet, folio or similar publication issued by Publisher in the United States containing at least 4, but not more than 25, musical compositions, an amount determined by dividing 10% of the wholesale selling price (after trade discounts, if any) of the copies sold among the total number of Publisher's copyrighted musical compositions included in such publication. If such publication contains more than 25 musical compositions, the said 10% shall be increased by an additional ½% for each additional musical composition.

(ii) If, pursuant to a license granted by Publisher to a licensee not controlled by or affiliated with it, the composition or any part thereof is included in any song book, song sheet, folio or similar publication in the United States containing at least 4 musical compositions, that proportion of 50% of the gross amount received by it from the licensee as the number of uses of the composition under the license and during the license period bears to the total number of uses of Publisher's copyrighted musical compositions under the license and during the license period.

In computing the number of Publisher's copyrighted musical compositions under subdivisions (i) and (ii) hereof, there shall be excluded musical compositions in the public domain and arrangements thereof and those with respect to which Publisher does not currently publish and offer for sale regular piano copies.

Royalties on publications containing less than 4 musical compositions shall be payable at regular copy rates.

(d) As to "professional material" not sold or resold, no royalty shall be payable.

(e) 50% of all gross receipts of Publisher in respect to any licenses authorizing the manufacture in the United States of parts of instruments serving to mechanically reproduce the composition or to use the composition in synchronization with sound motion pictures for exhibition in the United States, or to reproduce it upon electrical transcription for broadcasting purposes in the United State

and of any and all gross receipts of Publisher from any other similar source or right now known or which may hereafter come into existence in the United States, except as provided in subdivision (g) of this "Exhibit A".

(f) In determining Publisher's gross receipts under subdivision (e) hereof, Publisher shall be entitled to deduct from gross license fees paid by licensees for mechanical reproduction a sum not in excess of 2½% of said gross license fees.

(g) Composer shall not be entitled to any share of the moneys distributed to Publisher by the American Society of Composers, Authors and Publishers or any performing rights society in the United States which makes a distribution to writers, either directly or through the American Society of Composers, Authors and Publishers, of an amount which, in the aggregate, is at least equal to the aggregate amount distributed to publishers. If, however, the small performing rights shall be administered directly by Publisher in the United States, then Publisher shall pay an amount equal to 50% of all net sums received by Publisher therefrom.

(h) (i) 50% of all net sums received by Publisher from sales and uses outside the United States, other than sums received from performance rights, except with respect to Canada where, at Publisher's sole option, the rates to be applied on all or part of such receipts shall be either on the basis of 50% of net sums received by Publisher or for which the rates for the United States shall apply; provided, however, that in respect of all editions of printed copies, if Publisher should sell such copies through, or cause them to be sold outside the United States and Canada by, a subsidiary or affiliate which is actually doing business in a foreign country, then, in respect of such sales, Publisher shall then be paid hereunder not less than 5% of the marked retail selling price in respect of each such copy sold and paid for.

Composer shall not be entitled to any share of the moneys distributed to Publisher by any performance rights society outside the United States which makes distribution to composers of an amount which, in the aggregate, is at least equal to the aggregate amount distributed to publishers. If, however, any small performance rights outside the United States shall be administrated directly by Publisher, Publisher shall pay hereunder 50% of all net sums received by Publisher from said source.

(ii) The percentage of royalties payable hereunder on moneys received from sales and uses outside the United States shall be computed on the net sums received by Publisher; provided, however, that no deductions shall be made therefrom for offsets of moneys due from Publisher to said foreign sources or for advances made by such foreign source to Publisher, unless there shall have been paid hereunder at least 50% of said advances.

COMPUTATION OF ROYALTIES

(a) Royalties payable hereunder shall be computed at the applicable royalty rate on the basis of the retail list price, less all

COMPUTATION OF ROYALTIES

(a) Royalties payable hereunder shall be computed at the applicable royalty rate on the basis of the retail list price, less all excise, sales and use taxes and other taxes in the nature of sales and/or use taxes, however designated, in respect of either 90% of Company's gross sales, or 100% of Company's net sales (at Company's option from time to time and for each record and territory) of all phonograph records embodying Artist's performances, except as hereinafter provided.

Company's net sales of any record shall be determined on the basis of the number of copies of such record sold by Company and for which Company has been paid, after all returns, rebates, credits, cancellations, exchanges, etc., and prior to final determination thereof Company may set up reasonable reserves therefor. The retail list price of records sold in the United States, its territories and possessions, shall be the list price per record upon which Company computes its distributor discounts, and in the case of records sold in albums, jackets, boxes, cartridges, magazines, or any other device or container, other than stock factory sleeves, said list price of replacement records. As to records sold outside the United States, its territories and possessions, the retail list price shall be the list price per record for retail sales in the country of manufacture, or the United States, England, the country of sale, or the country of export or import, at Company's option. All royalties shall be computed in the national currency of the country involved, and shall be paid at the same rate of exchange as Company was paid, but if Company does not receive payment in U.S. dollars and elects to accept payment in a foreign currency, Company may deposit to Artist's account, and at Artists expense, in such currency, in a depository selected by Company, any payments so received as royalties applicable to this agreement and will notify Artist accordingly. Such deposit shall fulfill Company's obligation hereunder as to sales to which such royalty payments are applicable. All royalties under this agreement received from foreign sources shall be subject to any and all applicable foreign taxes.

(b) As to records sold directly to consumers or through record clubs or similar sales plans or devices and as to 12" disk type long-playing records (other than promotional records hereinafter provided for) on which the retail list price, as herein defined, is $2.00 or less per record, or the equivalent in foreign currency, the royalty rate shall be one-half of the rate otherwise payable, or 2½%, whichever is less; provided, however, that no royalty shall be payable with respect to records given away as "bonus" or "free" records as a result of joining the club or plan and/or purchasing a required number of records. As to all other records not sold or distributed through retail stores or other regular distribution channels, such as, but not limited to, records sold as premiums or in connection with the sale of any other product, commodity or service, royalties payable hereunder shall be computed on the basis of the amount per record actually received or accounted for by Company or its subsidiaries. No royalty shall be payable with respect to records given away or furnished on a "no charge" basis for promotional purposes or as a sales inducement, or otherwise, to disk jockeys, radio and television stations or networks, motion picture companies, distributors, dealers, consumers or others.

Company shall have the right to include masters recorded hereunder in promotional long-playing records on which such masters and masters obtained from other sources are included, which promotional records are designed for sale at a substantially lower price than the price of regular long-playing records; but not more than two such masters recorded by Artist hereunder shall be included in any one such promotional record. No royalties shall be payable on sales of promotional records in accordance with the foregoing.

(c) As to records not consisting entirely of masters recorded hereunder, Artist's royalties otherwise payable hereunder shall be prorated on the basis of the number of masters recorded hereunder which are on such records compared to the total number of masters on such records. As to masters embodying Artist's performances hereunder, together with the performances of another artist or artists, Artist's royalty otherwise payable hereunder, and the recording costs otherwise chargeable to Artist with respect to such masters, shall be prorated on the basis of the number of artists whose performances are on such masters.

(d) All recording costs incurred by Company under this or any other agreement between the parties, with respect to masters as to which royalties are payable (or Artist's proper proportionate share of such costs), and all advance payments made to Artist by Company under this or any such other agreement shall be charged against Artist's royalties under this or any other agreement between the parties, if and when earned.

"Recording costs" means all costs incurred by Company for and with respect to the production of masters, as distinguished from manufacturing and distribution costs, including, without limitation, the cost to Company of all instrumental musicians, vocalists, conductors, arrangers, orchestrators, copyists, etc., payments to a trustee or fund based on wages to the extent required by any agreement between Company and any labor organization or trustee, all studio, tape, editing, mastering and other similar costs in connection with the production of the final master, and all other costs and expenses incurred by Company in producing masters hereunder, from time to time, and which are customarily recognized as recording costs in the phonograph record industry. Costs of any session which is delayed or cancelled because of Artist's unavailability shall, at Company's option, be allocated to recording costs of masters accepted by Company hereunder, or charged against any payments due Artist.

(e) Company will compute Artist's royalties (less recording costs and advances as aforesaid) within sixty days after June 30 and December 31 of each calendar year, and will pay such royalties (except for royalties deposited in foreign banks as aforesaid) to Artist in accordance with such computation within said sixty day period. All royalty statements and other accounts rendered by Company shall be binding upon Artist and not subject to any objection for any reason, unless such objection is made in writing, stating the basis thereof, and delivered to Company within ninety days from the date of such statement or account, and after such notice of objection, unless suit is instituted within ninety days after the date upon which Company notifies Artist that it denies the validity of the objection.

"EXHIBIT A"

STATEMENT PURSUANT TO GENERAL RULE 9(g)
SUBMITTED BY NATIONAL BROADCASTING COMPANY, INC.

(Reproduced herein at pages 559a through 562a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al., Plaintiffs, -against- UNIVERSAL PICTURES, INC., et al., Defendants.	(S.J.R.) 72 Civ. 542 STATEMENT IN OPPOSITION TO DEFENDANTS' GENERAL RULE 9(g) STATEMENT

National Broadcasting Company, Inc. (hereinafter "NBC"), in response to plaintiffs' Rule 9(g) Statement, states:

1. Denies the allegations contained in paragraph 1 and contends that:

(a) the right, title and interest, including the copyright, of musical compositions written by composers and lyricists for motion pictures and television (the "rights") vested in defendants as a matter of law;

(b) in the majority of the rare cases in which NBC contracted with composers for the composition of music for use in motion picture and television films, NBC agreed with the composers that, with the exception of the right to dramatize, synchronize, record and publicly perform the musical composition in synchronization with the television program for which the music was commissioned, all rights in the music were reserved to the composer.

2. Denies the allegations contained in paragraph 2 and contends that in the majority of cases the rights in the musical compositions not required for the production of the motion picture or television show were granted to the composers. In those cases in which the copyright was retained by NBC, the rights in the music were divided between the composers and NBC.

3. Denies the allegations in paragraph 3 and contends that in the majority of contracts between NBC and composers the composers were free to select any music publishing company they desired.

4. Denies the allegations contained in paragraph 4 and contends that in the majority of contracts the music publishers were selected by the composers. In those cases in which NBC selected the publishing company, the publishing company was engaged in businesses which were integrated with the motion picture and television business of NBC.

5. Denies the allegations contained in paragraph 5 and contends that NBC has always contracted with composers without any preconditions, except that as a result of pressure brought upon it by the Composers and Lyricists Guild of America (the "Guild"), a labor organization of which all of the named plaintiffs are members, NBC has been required to agree to terms at least as favorable to the composer as terms spelled out in a minimum basic agreement between the Guild and the Association of Motion Picture and Television Producers ("AMPTP").

6. Denies the allegations contained in paragraph 6 and contends that NBC was entitled to become the registered

copyright owner by operation of law of all musical compositions which it commissioned and that, in fact, NBC has relinquished this right in the large majority of cases in which it has contracted with composers.

7. Denies the allegations contained in paragraph 7.

8. Admits that NBC has attempted to deal with its composers as though they were independent contractors, although it has been opposed in this regard by the Guild.

9. Denies the allegations contained in paragraph 9.

10. Admits that the last minimum basic agreement between the Guild and the AMPTP expired in November, 1971, and that since that time there have been no collective negotiations but denies knowledge or information sufficient to form a belief that no further negotiations are contemplated as NBC is not a member of the AMPTP.

11. NBC contends that the instant complaint evolved out of a labor dispute between the Guild and its members on the one hand, and the AMPTP on the other, and that if, as is now apparently claimed by the plaintiffs, the Guild is not a proper collective bargaining agent, then NBC has been wrongfully coerced, as a result of an illegal combination and conspiracy in violation of Sections 1 and 2 of the Sherman Act, into agreeing to accept certain provisions of the minimum basic agreement.

CAHILL GORDON & REINDEL

By: _____
A Member of the Firm
Attorneys for Defendant
National Broadcasting Company, Inc.
80 Pine Street
New York, New York 10005

TO:

BATTLE, FOWLER, LIDSTONE,
JAFFIN, PIERCE & KHEEL
Attorneys for Plaintiffs
280 Park Avenue
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(212) 986-8330

HAWKINS, DELAFIELD & WOOD
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ROYALL, KOEGEL & WELLS
Attorneys for Defendant
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200 Park Avenue
New York, New York 10017

SHEA, GOULD, CLIMENKO & KRAMER
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330 Madison Avenue
New York, New York 10017

CRAVATH, SWAINE & MOORE
Attorneys for Defendant
Columbia Broadcasting System, Inc.
One Chase Manhattan Plaza
New York, New York 10005

DONOVAN, LEISURE, NEWTON & IRVINE
Attorneys for Defendant
Walt Disney Productions, Inc.
30 Rockefeller Plaza
New York, New York 10020

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON
Attorneys for Defendants
Transamerica Corporation, Columbia
Pictures Industries, Inc., United
Artists Corporation, Warner Bros.,
Inc. and Warner Communications, Inc. &
Association of Motion Picture & Tele-
vision Producers, Inc.
477 Madison Avenue
New York, New York 10022

AFFIDAVIT OF MARK C. MOERSEN
IN OPPOSITION TO PLAINTIFFS' MOTION

(Reproduced herein at pages 564a through 567a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al.,	:	
Plaintiffs,	:	(S.J.R.) 72 Civ. 542
-against-	:	AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND A PRELIMINARY INJUNCTION
UNIVERSAL PICTURES, INC., et al.,	:	
Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MARK C. MOERSEN, being duly sworn, deposes and says:

1. I am Manager of the Music and Literary Rights Department of National Broadcasting Company, Inc. ("NBC"). I have held this position since August 1967.

2. NBC is primarily engaged in the business of television broadcasting. On rare occasions, it produces one of the television programs broadcast on the NBC network. On some of those occasions, NBC contracts with a composer for the composition of original music to be used in such programs. During the period of time that I have held this position I have had no discussions with representatives of producers of motion pictures and television shows concerning the terms and conditions of NBC's contracts with composers and lyricists. I have made no agreement and have had no understanding with any outside parties as to the terms and conditions which NBC would seek in negotiating contracts with composers. NBC is not a party to any such

agreements or understandings, with the exception of a letter agreement between NBC and the Composers and Lyricists Guild of America, annexed as Exhibit B to the affidavit of Richard N. Goldstein. NBC is not a member of any group, organization or combination that has reached such agreement or understanding. If there were any such agreements in effect I would be aware of them, since it is my responsibility to negotiate contracts with composers.

3. I have never received instructions from anyone at NBC to require composers, as a condition of doing business with NBC, to surrender all their rights in the composition. Indeed, in most cases, I have negotiated contracts whereby NBC has surrendered the copyright in the music to the composer.

4. At the request of counsel for NBC, I have reviewed all contracts entered into between NBC in New York and composers in the six years preceding the filing of this complaint. The name of the composer, the programs for which he was commissioned to compose music, the date of the contract and the ownership of the copyright are identified below:

Name	Program	Date	Ownership
1. Amram, David	"Seven Cities Named in Revelation"	11/3/71	The Composer owns the music
2. Armstrong, Don	"Who Killed Lake Erie"	9/5/68	NBC owns the music
3. Belasco, Jacques	"Beyond the Sky-Tomorrow's World"	12/4/67	NBC owns the music
4. Belasco, Jacques	"Apollo: A Journey to the Moon"	7/3/69	NBC owns the music
5. Bennett, Robert Russel	Various Programs	1/1/66	The Composer owns the music

Name	Program	Date	Ownership
6. Burns, Ralph	"Remnant Part I" and "Remnant Part II"	11/10/69	The Composer owns the music
7. Byrd, Charlie	"The American Wilderness"	11/20/70	NBC owns the music
8. Byrd, Charlie	"Justice For All"	10/18/67	NBC owns the music
9. Fiser, Lubos	"Passport to Prague"	12/26/67	NBC owns the music
10. Gross, Charles	"The Dark Side"	2/8/72	NBC owns the music
11. Kasha, Al	"The Unemployables"	3/12/68	The Composer owns the music
12. Kleinsinger, George	"National Gallery of Art"	10/23/67	The Composer owns the music
13. Laderman, Ezra	"Our Endangered Wildlife"	8/31/67	The Composer owns the music
14. Laderman, Ezra	"The Forgotten Peninsula"	10/30/67	The Composer owns the music
15. Levinsky, Walter	"Animals of the Serengeti Mara"	1/23/68	The Composer owns the music
16. Levinsky, Walter	"The Barrier Reef"	4/30/70	The Composer owns the music
17. Levinsky, Walter	"Survival on the Prarie"	1/8/70	The Composer owns the music
18. Maxwell, Robert	"A Day with Bill Cosby"	3/15/71	The Composer owns the music
19. Maxwell, Robert	"Pets Allowed"	9/30/70	The Composer owns the music
20. Maxwell, Robert	"Jennifer and Me"	12/16/71	The Composer owns the music
21. Maxwell, Robert	"Watch Your Child, Me Too"	11/12/71	The Composer owns the music
22. Rosenthal, Laurence	"The Sahara"	5/21/69	The Composer owns the music
23. Wilcox, Larry	"World of Rembrandt"	11/3/67	The Composer owns the music
24. Wilcox, Larry	"The Legacy of Anne Frank"	11/3/67	The Composer owns the music

4. An examination of these contracts, which are annexed to this affidavit as Exhibits 1 through 24, reveals that in 17 out of the 24 contracts, NBC surrendered all rights in the composition except the right to use the composition in connection with the program for which it was written.

5. I am advised by NBC's West Coast office, the only office other than New York that has any authority to commission the composition of original music by composers for use in motion picture and television films, that the only program for which their office has commissioned music on behalf of NBC since 1967 is "Bonanza". NBC entered directly into contracts with composers on only two occasions in that period, and in neither case did it obtain the copyright in the music. These contracts are attached as Exhibits 25 and 26 to this affidavit.

Mark C. Moersen

Mark C. Moersen

Sworn to before me this

day of January, 1974.

Lorenzo Casanova

Notary Public

LORENZO CASANOVA
NOTARY PUBLIC, State of New York
No. 03-0590260
Qualified in Bronx County
Commission Expires March 30, 1975

AFFIDAVIT OF RICHARD N. GOLDSTEIN
IN OPPOSITION TO PLAINTIFFS' MOTION

(Reproduced herein at pages 569a through 570a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al., Plaintiffs, -against- UNIVERSAL PICTURES, INC. et al., Defendants.	(S.J.R.) 72 Civ. 542 AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND A PRELIMINARY INJUNCTION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RICHARD N. GOLDSTEIN, being duly sworn, deposes and says:

1. I am Vice President, Labor Relations, of the National Broadcasting Company, Inc. ("NBC"), and have seryed in that position since 1968. Prior to obtaining my present position, I served as director of Labor Relations of NBC from 1961 to 1968.

2. During the years that I have been Director of Labor Relations and Vice President I have never entered into any agreements, understandings, combinations or other arrangements, with representatives of producers of motion picture and television shows or with any other outside parties concerning the terms and conditions which NBC would seek in negotiating contracts with composers and lyricists, except as described herein below. To the best of my knowledge there have never been any such agreements between NBC and any person or persons, except as described herein below.

3. As Director of Labor Relations for NBC, I long resisted the demands of the Composers and Lyricists Guild of America ("the Guild") to enter into any agreements with the Guild concerning terms and conditions of NBC's contracts with composers.

4. On July 19, 1968, I received an ultimatum from the executive director of the Guild advising me that from that date "no member will perform services for (NBC) unless a fully detailed minimum basic contract has been agreed upon between your organization and ours." (See Exhibit A). Thereafter, in response to this threat by the executive director of the Guild, NBC entered into a contract with the Guild, whereby it agreed, inter alia, to honor minimum basic salaries contained in an agreement between the Guild and the Association of Motion Picture and Television Producers (AMPTP), to pay pension, health and welfare benefits on behalf of composers and to abide by the provisions of Article 13 of the Minimum Basic Agreement between the Guild and AMPTP with reference to music rights (See Exhibit B).

Richard N. Goldstein

Richard N. Goldstein

Sworn to before me this
16th day of January, 1974.

Robert R. Cawthra, Jr.
Notary Public

ROBERT R. CAWTHRA, JR.
Notary Public, State of New York
No. 31-0607710
Qualified in New York County
Commission Expires March 30, 1975

EXHIBIT "A" - TELEX - ANNEXED TO AFFIDAVIT
OF RICHARD N. GOLDSTEIN

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NBC NYK

TXA592 947P EDT JUL 18 6S (51)LA468

L LSA031 PDB 2 EXTRA TDL HOLLYWOOD CALIF 18 155P PDT

RICHARD GOLDSTEIN

DIRECTOR OF LABOR RELATIONS NATIONAL BROADCASTING CO

30 ROCKEFELLER PLAZA NYK

THE MEMBERS OF THE COMPOSES AND LYRICISTS GUILD OF AMERICA

HAVING FULFILLED OR ARE FULFILLING ALL EXISTING CONTRACTS HEREBY

FORMALLY ADVISE YOU THAT FROM THIS DATE ON NO MEMBER WILL PERFORM

SERVICES FOR YOU UNLESS A FULLY DETAILED MINIMUM BASIC CONTRACT

HAS BEEN AGREED UPON BETWEEN YOUR ORGANIZATION AND OURS WE

REQUEST THAT YOU DESIGNATE A TIME AND PLACE IN THE IMMEDIATE

FUTURE WHERE WE CAN MEET AND RESOLVE THE ISSUE SINCERELY

TD CAIN EXECUTIVE DIRECTOR COMPOSES AND LYRICISTS GUILD OF

AMERICA

(255).

EXHIBIT "B" - LETTER DATED MAPCH 12, 1969 - ANNEXED TO AFFIDAVIT OF RICHARD N. GOLDSTEIN

Mr. Ted Cain
Executive Director
Composers and Lyricists Guild
6565 Sunset Boulevard
Hollywood, California 90028

Dear Mr. Cain:

The purpose of this letter is to confirm our understanding with respect to the services of composers who are members of the Composers and Lyricists Guild. Specifically, in behalf of NBC Productions, Inc. I have agreed to the following in connection with the production of motion picture films, theatrical and television, by NBC Productions, Inc.:

In our negotiations with composers who are members of the Guild we will obligate ourselves to honor the minimum basic salaries in the then-existing guild Agreement.

We will pay Pension and Health and Welfare Benefits in behalf of such composer-members as provided for in the Guild Agreement.

With respect to the necessary payroll deductions and payments as required by law, NBC Productions, Inc. will evaluate what the employer payments would be if the composer had been an employee of the Company and will forward that amount along with the agreed upon compensation and employer pension, health and welfare payments to Lyricon, Inc., who will be responsible for making the appropriate payroll deductions and disbursement of the funds.

Our written agreement with each such member composer will include the substance of Article XIII (Rights) as in the current Composers Guild Agreement but will be expressed in NBC Productions, Inc. form.

The above applies to members of the Composers Guild only and has been made with the understanding that NBC Productions, Inc. will continue its practice of obtaining the services of such composers on an

EXHIBIT "B" - LETTER DATED MARCH 12, 1969 - ANNEXED TO AFFIDAVIT OF RICHARD N. GOLDSTEIN

independent contractor basis and will deal directly with the composer or his agent as heretofore in negotiating for such services. Our agreement does not apply to composers who are engaged by NBC Productions, Inc. and who are not members of the Guild. We may continue to negotiate with such composers and structure our "deals" as heretofore.

Attached are the current provisions of the Composers Guild Agreement in connection with Pension, Health and Welfare which have been distributed here at NBC Productions, Inc.

Sincerely yours,
NBC PRODUCTIONS, INC.

By s/ (illegible)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al., Plaintiffs, -against- UNIVERSAL PICTURES, INC. et al., Defendants.	72 Civ.542 C.L.B. AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND A PRELIMINARY INJUNCTION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

CLARENCE FRIED, being duly sworn, deposes and says:

1. I am a member of the firm of Hawkins, Delafield & Wood, and represent defendant American Broadcasting Company ("ABC") in the above entitled action.

2. Whereas defendant ABC shares a unanimity of interest with the other defendants and because no claim is alleged against ABC with particularity, ABC presents no papers other than this brief affidavit in opposition to plaintiff's motion for summary judgment and a preliminary injunction. ABC relies on the affidavits and brief submitted heretofore by its co-defendants.

3. With particular reference to ABC's contractual relation with the union, the Composers & Lyricists Guild of America ("CLGA"), annexed hereto as Exhibit 1 is a copy of a letter agreement dated March 28, 1967 which expresses ABC's willingness to be bound by portions of the earlier negotiated collective bargaining agreement, referred to as the Minimum Basic Agreement, in its dealings with composers who were members of the CLGA. This letter agreement is

AFFIDAVIT OF CLARENCE FRIED
IN OPPOSITION TO PLAINTIFFS' MOTION

identical to that signed by co-defendant NBC and on information and belief, also identical to that signed by CBS. Accordingly, ABC joins in and relies upon the papers submitted by the aforesaid defendants as to this phase of the case.

Clarence Fried
CLARENCE FRIED

Sworn to before
me this 14 day
of February, 1974

Notary Public

JOHN P. [illegible]
Notary Public, State of New York
No. 24-[illegible]
Qualified in New York County
Commission Expires March 30, 1974

**EXHIBIT 1 - LETTER DATED MARCH 28, 1969 -
ANNEXED TO AFFIDAVIT OF CLARENCE FRIED**

MARTIN BAUM, PRESIDENT
1901 AVENUE OF THE STARS • SUITE 1050 LOS ANGELES, CALIFORNIA 90067 (213) NO 3-3511

March 28, 1969

Mr. Ted Cain
Executive Director
Composers and Lyricists Guild
6565 Sunset Boulevard
Hollywood, California 90028

Dear Ted:

The purpose of this letter is to confirm our understanding with respect to the services of composers who are members of the Composers and Lyricists Guild. Specifically, we have agreed to the following in connection with the production of motion picture films, theatrical and television, by ABC Pictures Corp.:

In our negotiations with composers who are members of the Guild we will obligate ourselves to honor the minimum basic salaries in the then-existing Guild Agreement.

We will pay pension, and health and welfare benefits in behalf of such composer-members as provided for in the Guild Agreement.

With respect to the necessary payroll deductions and payments as required by law, we will evaluate what the employer payments would be if the composer had been an employee of the Company and will forward that amount along with the agreed upon compensation and employer pension, health and welfare payments to LYRICON INC. who will be responsible for making the appropriate payroll deductions and disbursements of the funds.

Our written agreement with each member composer will include a substance of Article XIII (Rights) as in the current Composers Guild Agreement, but may be expressed in ABC form.

(continued)

EXHIBIT 1 - LETTER DATED MARCH 28, 1969 -
ANNEXED TO AFFIDAVIT OF CLARENCE FRIED

The above applies to members of the Composers Guild only and has been made with the understanding that ABC Pictures Corp. may continue its practice of obtaining the services of such composers on an independent contractor basis and may deal directly with the composer or his agent as heretofore in negotiating for such services. Our agreement does not apply to composers who are engaged by ABC Pictures Corp. and who are not members of the Guild. We may continue to negotiate with such composers and structure our "deals" as before.

It is understood that nothing contained above precludes an independent producer making product for ABC Pictures from signing the Composers and Lyricists Guild MBA either for the full length of its term or, in the case of a producer producing a single picture, for the term of the single picture if so desired by the independent producer.

We have agreed that the understanding set forth above will be made effective immediately.

Very truly yours,

Martin Baum, President
ABC Pictures Corp.

OPINION OF BRIEANT, J.

(Reproduced herein at pages 579a through 599a)

OPINION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al.,

Plaintiffs,

-against-

UNIVERSAL PICTURES, INC., et al.,

Defendants.

72 Civ. 542-CLB

MEMORANDUM

Brieant, J.

This class action was commenced on February 7, 1972 by 71 composers and lyricists as named party plaintiffs. These authors and composers of original words and music for motion picture and television films sue on behalf of themselves, and all others similarly situated. Defendants are motion picture and television producers. The Association of Motion Picture and Television Producers, Inc. (hereinafter "AMPTP"), a trade association to which most of the defendants belong, has been dismissed as a defendant by stipulation.

Plaintiffs invoke our jurisdiction under §§4 and 16 of the Clayton Act (15 U.S.C. §§15 and 26) and §§1 and 2 of the

OPINION

Sherman Act (15 U.S.C. §§1 and 2), to secure injunctive relief and damages for alleged antitrust violations.

An order of this Court dated June 18, 1973 determined, conditionally, that this litigation be maintained as a class action pursuant to Rule 23(b)(1), F.R.Civ.P. A further order dated October 5, 1973 defined the class as:

> "all composers and lyricists, and in the case of deceased composers and lyricists, their representatives, who have composed music and/or lyrics for any of the defendants for motion pictures and television shows...."[1]

The complaint alleges that defendants, acting in concert, refuse to contract for the services of composers,[2] except upon certain standard terms and conditions imposed upon them by the defendants, and that the imposition of these terms by the defendants is part of a conspiracy aimed at monopolizing the (sheet) music publishing industry by preventing plaintiffs and others from entering the industry, in violation of the antitrust laws.

The standard terms referred to are contained in agreements between defendant producers and composers. In essence, these terms relate to ownership by producers of copyrights of the compositions

created by the composers for motion picture and television sound tracks.[3]

The named plaintiffs are all members of the Composers and Lyricists Guild of America, Inc. ("CLGA"), which was formed in 1954, as are most of the members of the plaintiff class. Notice of the pendency of this action, and an invitation to join as parties plaintiff was sent to all 427 members of CLGA, except the 71 plaintiffs. Some 291 members did not reply or replied negatively. Approximately 65 responded affirmatively, but the record shows no additional plaintiffs intervened or asked to be listed as plaintiffs.

In July 1973, plaintiffs moved pursuant to Rules 12(f), 56 and 65 for an order:

> "striking, or in the alternative, granting summary judgment dismissing defendants' affirmative defenses based on (1) the labor exemption of the antitrust laws, and (2) the claim of primary and exclusive National Labor Relations Board jurisdiction, and for an order enjoining defendants during the pendancy (sic) of this action from imposing upon plaintiffs standard terms

regarding the right to publish and exploit plaintiffs' musical compositions or from making any contracts having the effect of restraining plaintiffs from making use of their musical compositions or surrendering to defendants the copyrights in said musical compositions...."

The motion was heard on February 28, 1974.

A motion for summary judgment seeking dismissal of affirmative defenses is clearly improper, and therefore relief pursuant to Rule 56 must be denied plaintiffs.

> "[I]t is difficult to see how the elimination of [an] affirmative defense could lead to any judgment, summary or otherwise. It would merely narrow the area of dispute; and the Rules do not appear to contemplate the use of the summary judgment procedure in situations such as the present one." Seacoast Liquor Distributors, Inc. v. Kips Bay Brewing Co., Inc., 8 F.R.D. 74, 75 (S.D.N.Y. 1947).

In Old Dutch Farms, Inc. v. Milk Driv. & Dairy Emp. Loc. U. No. 584, 281 F.Supp. 971 (E.D.N.Y. 1968), the Court considered a motion for summary judgment brought pursuant to Rule 56 to dismiss affirmative defenses as a motion to strike under Rule 12(f), stating:

> "Although at one time the proper procedure for raising objection to the sufficiency of

> a defense troubled some courts, it seems that the 1946 amendment to Rule 12(f) was designed to provide a specific method of raising such a challenge." 281 F.Supp. at pp. 975-76.
>
> Rule 12(f) reads in pertinent part as follows:
>
> "[U]pon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense...."

Treated as a Rule 12(f) motion, plaintiffs' request to strike affirmative defenses is untimely. But, Rule 12(f) also provides that the Court on its "own initiative" may grant the relief requested. In view of the age of this litigation, and the voluminous papers presented, we now consider whether that initiative should be exercised.

Historical Background of the Controversy.

Since about 1928, when the use of sound in motion pictures became commonplace, producers have hired composers to compose words and music for films under contracts describing them as "employees". With some exceptions, until the early or mid-1950's, most major motion picture producing companies, or "studios" had

regularly employed staff composers working directly for the studio as salaried employees using employer facilities. In the early or mid-1950's, the producers began phasing out their staffs of regularly employed composers. Since then, studios or producers have hired composers, pursuant to written agreements, for single motion pictures or television productions. (Affidavit of Ted Cain, sworn to July 17, 1973).

Apparently in response to this change in business methods, the Composers and Lyricists Guild of America, Inc. was formed to represent its composer members in negotiations with individual producers and also with respect to industry wide bargaining with their trade association, AMPTP. On August 19, 1955, after an election held by the National Labor Relations Board ("NLRB"), CLGA was certified as the exclusive representative "of all the employees in the unit ... for the purposes of collective bargaining...," with individual movie producers and the AMPTP as a multi-employer unit. (NLRB Certification, Exhibit 1 to Affidavit of Simon Rose, Esq., sworn to November 20, 1973).

Bargaining between CLGA and AMPTP resulted in three successive collective bargaining agreements, each entitled "Minimum

Basic Agreement," signed in 1960, 1965 and 1967 (Exhibits 19, 20 and 21 to Rose Affidavit of November 20, 1973).[4] Each of the industry wide collective bargaining agreements fixed minimum terms binding on the employer members of AMPTP, but the agreements left composers free to negotiate other or different terms, so long as the terms of each individual contract were at least as favorable to the composer as those contained in the basic agreement.[5]

Article 10 of the 1965 and 1967 agreements provides:

> "This agreement applies to and is incorporated into the provisions of each individual contract between the employer and a composer with respect to services subject to this agreement, and such individual contract shall contain a statement to such effect."

In addition to other terms, including a minimum wage scale, each agreement provided for division of the rights embraced in the copyright to the music writt while employed. The composers' share in these rights, along with the scale of minimum wages, increased with each agreement, but the producers in the course of the collective bargaining maintained a consistent position of refusal to accede to CLGA's demand for ownership of the copyrights by the individual composers.

OPINION

After several extensions, the 1967 Basic Agreement expired on November 30, 1971 (Affidavit of Abraham Marcus, Esq., sworn to July 17, 1973). Thereafter, a number of bargaining sessions were held in an effort to negotiate a new industry-wide contract. Negotiations were unsuccessful. A CLGA press release announced on November 15, 1971 that "negotiations with the AMPTP reached an impasse ... on the issue of Copyright ownership." This and other requests having been denied, CLGA felt it had "no other choice, but to recommend a work stoppage [i.e., a strike]." (Exhibit 25 to Affidavit of Simon Rose, Esq., sworn to November 20, 1973).

At midnight on November 30, 1971, the CLGA called out its members on strike against producer members of the AMPTP. Simultaneously CLGA filed an unfair labor practice charge against AMPTP, alleging that "since on or about November 8, 1971, and at all times since that date [AMPTP] refused to bargain in good faith .... These acts of refusal have also taken the form of discriminatory conduct against employees ... in violation of 8(a)(3) of the [National Labor Relations] Act, thereby discouraging membership in the union." (Exhibit A to Affidavit of Charles Boren, sworn to November 20, 1973).

OPINION

AMPTP also filed an unfair labor practices charge against CLGA on November 30, 1971, alleging, inter alia, that the union had bargained to impasse and was striking over an issue [the copyrights], not a mandatory subject of collective bargaining, and had done so without giving the notice required by §8(d) of the Act. On June 15, 1972, the Regional Director of the NLRB advised AMPTP's attorney that the Board would not issue a complaint based on its unfair labor practice charge because the copyright issue was "a mandatory subject of bargaining within the meaning of §8(d) of the Act under the test of Borg-Warner, 356 U.S. 342 (1958), as it involves the relationship between employer and employee, and settles a 'term and condition' of employment, i.e., the total compensation accruing to the composers from their unit work." (Exhibit E to Affidavit of Charles Boren, sworn to November 20, 1973).

The CLGA strike was unsuccessful. During December 1971 and January 1972, a representative of the Federal Mediation Service convened meetings with CLGA and AMPTP representatives. No agreement was reached. (Affidavit of Charles Boren, sworn to November 20, 1973). No further negotiations have taken place and none are contemplated. (Affidavit of Abraham Marcus, Esq., sworn to July 11, 1973).

OPINION

According to a CLGA press release, institution of this action "was approved at a general membership meeting yesterday [January 31, 1972] .... * * * This unprecedented action shifts the composers and lyricists struggle for ownership of all of their [copy]rights from the labor to the legal arena." (Exhibit 27 to Affidavit of Simon Rose, Esq., sworn to November 20, 1973).[6/] This action was filed seven days later, and on March 7, 1972, CLGA withdrew its unfair labor practice charge against AMPTP. (Affidavit of Charles Boren, sworn to November 20, 1973).

The labor union, for so it has represented itself to be for the past 30 years, cannot remove jurisdiction from the National Labor Relations Board and confer it upon this Court by the simple expedients of a membership vote and the commencement by its then President of this class action litigation couched in antitrust terms, followed by withdrawal of its unfair labor practice charges. In view of the undisputed history of the underlying disagreement, the plaintiffs' claim that they are now and always have been independent contractors, rather than union members or employees, is regarded as mere sophistry, and an exercise in shifting nomenclature contrived in order to sustain this lawsuit.

Plaintiffs' Theory of Antitrust Violation.

The claimed antitrust violation seems to depend upon the concept that there is something sinister, unlawful and conspiratorial about defendants refusal to disgorge, and turn over to plaintiffs, ownership of existing or future copyrights in plaintiffs' musical compositions created for defendants' films to which copyrights plaintiffs believe they have a right. Whatever kind of "right" they may have, it is not a legal right.

The copyright laws ware amended, effective October 15, 1971. Despite strenuous efforts by CLGA and others to convince Congress the existing law should be amended to eliminate the "work for hire doctrine," [17 U.S.C. §26] the statute still provides, as it has at all material times, that: "(1) ... the word 'author' shall include an employer in the case of works made for hire." The doctrine clearly applies when the relationship is that of employer-employee. It is equally applicable however, where the creator of the work is an independent contractor. See Brattleboro Publishing Co. v. Winmill Publishing Corp., 369 F.2d 565 (2d Cir. 1966). The statute gives rise to a presumption of ownership of the copyright by the party who commissioned the

work at his own instance and expense. This presumption controls in the absence of a showing of contrary intent, as by contractual terms. See Irving J. Dorfman Co. v. Borlan Industries, Inc., 309 F.Supp. 21, 23 (S.D.N.Y. 1969). The "works for hire" doctrine and its applicability to independent contractors as well as employees was reaffirmed in Picture Music Inc. v. Bourne, Inc., 457 F.2d 1213 (2d Cir. 1972), cert. denied, 409 U.S. 997 (1973).

Whether the plaintiffs be considered employees or independent contractors, the producers had a statutory right to ownership of copyrights to musical compositions they commissioned. The mere refusal of the producers to give up the right conferred by the Congress, and to do so pursuant to collective bargaining or otherwise, cannot be considered contrary to the antitrust or any other laws. Nor is the fact that some producers have done so by agreement evidence of an illegal conspiracy in restraint of trade.

NLRB Jurisdiction.

The Court finds defendants' affirmative defense which pleads that primary and exclusive subject matter jurisdiction is vested in the National Labor Relations Board is sufficient as a

matter of law. Plaintiffs' motion to dismiss this affirmative defense is denied, and, on its own motion, pursuant to Rule 12(h)(3), the Court must dismiss the complaint. Rule 12(h)(3) provides:

> "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

From the facts outlined above, it is clear that this action arises out of a labor dispute over which the NLRB has exclusive jurisdiction. Even though the complaint alleges violations of the antitrust laws, the issue is essentially a refusal by the defendants to bargain regarding copyright ownership, which, if proven, is an unfair labor practice as defined in §8(a)(5) of the National Labor Relations Act [29 U.S.C. §158(a)(5)]. Section 8(a)(5) refers to §159(a), which in turn compels collective bargaining:

> "... in respect to rates of pay, wages, hours of employment, or other conditions of employment...."

In a recent decision enlarging the exclusive jurisdiction of the NLRB, our Court of Appeals held in Buckley v. Amer. Federation of Television and Radio Artists, Docket No. 73-1667, decided April 30,

1974, p.3084, ____F.2d ____, (2d Cir. 1974):

> "Although [the complaint] do[es] not explicitly allege violations of §§8(a)(3) and 8(b)(2) [footnote omitted], [it does] aver the commission of acts which we find are 'arguable' unfair labor practices under ... the NLRA. When unfair labor practices are alleged 'the federal courts must defer to the exclusive competence of the National Labor Relations Board.' San Diego Building Trades Council v. Garman [359 U.S. 236 (1959)] at 245; accord Amalgamated Ass'n of Street, Elec. Ry. & Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971)."

The test announced in Buckley turns on whether the factual conduct, however it may be pleaded in the complaint, is "arguably violative of §8, as it must be for the jurisdiction of a federal court to be preempted," Buckley, supra, at pp.3084-85, footnote 4. Plaintiffs in Buckley, political commentators, had been compelled to join a union, and submit to union discipline as a condition of employment in radio and television, which had a chilling effect on the exercise of their First Amendment rights. The Court of Appeals held that any union attempt to enforce written contracts requiring employers to discharge plaintiffs for resigning from the union would "arguably" violate NLRA §§8(a)(3) and 8(b)(2), and therefore would be within the exclusive jurisdiction of the NLRB. Buckley, supra, at pp.3085-86.

As we have pointed out, the issue in this case is "arguably" a violation of NLRA §8(a)(5), and possibly of §8(a)(3),[7] as CLGA originally claimed in its unfair labor practice charge, since withdrawn. It is of no consequence that plaintiffs claim the same conduct also violated the antitrust laws. If the NLRA is properly construed, as it was in Buckley, supra, to grant exclusive subject matter jurisdiction to the Board, of a claim arising under the First Amendment ("a profound national commitment" [New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1963)]) simply because the factual context in which the claim arises is "arguably" also an unfair labor practice, then a fortiori it is not anomalous for us to reach the same conclusion as to the claims here pleaded.[8] Plaintiffs' "selection of forum was incorrect," Buckley, supra at p.3086. Amalgamated &c Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971).

Since the Court lacks jurisdiction over the subject matter of this action, granting a preliminary injunction would be improper, and we do not reach the merits of plaintiff's motion for that relief, nor need we discuss the affirmative defenses based on the labor exemption in the antitrust laws.

Effect of this Determination on the Class.

As noted, the class conditionally declared here includes all composers, and the personal representatives of those who may be deceased, who were ever employed for motion pictures since Al Jolson first sang "Mammy" in The Jazz Singer.[9/] The earliest date for which we find Congressional pre-emption is July 5, 1935. It is more than likely that by February 7, 1972 the statute of limitations had expired as to all antitrust claims by any members of the purported class, accrued prior to July 5, 1935.

The determination made herein is without prejudice to the rights of those composers, if any, whose claims arose before pre-emption and are not time barred. All such persons, if any there be, should be and are excluded from the class.

Plaintiffs' motion is in all respects denied, and the complaint is dismissed.

Settle Order on Notice.

Dated: New York, New York
June 28, 1974

CHARLES L. BRIEANT, JR.

CHARLES L. BRIEANT, JR.
U. S. D. J.

F O O T N O T E S

1. The order dated October 5, 1973 made the following direction with respect to notice to the class:

> "FURTHER ORDERED that counsel for plaintiffs and defendants shall compile a list of those composers and lyricists who are included in the above described class and to whom notice of pendency of this action shall be sent, and it is
>
> FURTHER ORDERED that notice of pendency of this action in the form annexed to this Order shall be mailed to members of the class, and it is
>
> FURTHER ORDERED that the notice of pendency of this action shall be published once weekly for two consecutive weeks in the weekly edition of 'Variety', and it is
>
> FURTHER ORDERED that this Order may be altered or amended by the Court as may be desirable from time to time."

Pursuant to the October order, notice of pendency of this action was published in Variety and was sent by mail to members of the class, approximately 1,000 persons, on January 22 and 23, 1974. About 155 notices were returned undelivered by the post office and to date, some 50 class members have asked to be excluded.

2. The term "composers" as used hereinafter shall include lyricists.

3. Essentially, the composers seek unilateral power to exploit their compositions by use elsewhere than in the sound tracks, e.g., by sale of sheet music and phonograph records. In the last industry-wide contract with AMPTP, which expired on November 30, 1971, ownership of the copyright by the employer was agreed to, but substantial rights to deal with the composition were granted to the employee. These included publication royalties at various rates, and the right to repurchase from the employer certain unused theme music and songs at employer's cost, after five years. (Articles 13, 20(b)(7) and 21 of 1967 Minimum Basic Agreement, Exhibit 21 to Affidavit of Simon Rose, Esq., sworn to November 20, 1973).

4. CLGA was not certified as bargaining representative with respect to those defendants who operate television networks. These defendants do not belong to AMPTP, nor have they engaged in the collective bargaining which took place between AMPTP and CLGA. The network defendants for the most part will grant the composers the disputed copyright interests upon request, and upon demand by CLGA, have agreed to incorporate in their contracts with CLGA composers certain terms contained in the Minimum Basic Agreements. For example, in response to the usual kind of coercion applied in labor negotiations, here taking the form of a telegram advising that CLGA members would not perform any further services for NBC unless a minimum contract was agreed upon between NBC and CLGA (Exhibit A to Affidavit of Richard N. Goldstein, sworn to January 15, 1974), NBC entered into an agreement with the union. By letter dated March 19, 1969 (Exhibit B to Goldstein Affidavit of January 16, 1974), NBC obligated itself to incorporate in its contracts with CLGA members the substance of provisions of the CLGA-AMPTP agreement setting minimum wage rates, providing for pension fund payments and granting rights arising from copyright ownership, but retaining the right to employ non-CLGA composers

on other terms. As NBC correctly points out, if CLGA is not a labor union and its members are not employees, such conduct would itself violate the antitrust laws (NBC Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and a Preliminary Injunction, p.4, et seq.).

The parties agree that this motion is not addressed to CBS because by stipulation CBS has not yet answered and its defenses obviously are not yet known.

5. The CLGA established procedures to review each such contract to ascertain if in fact the special provisions negotiated by a particular composer were more favorable. See, e.g., Article 9 of the 1965 Minimum Basic Agreement:

> "Delivery of Contracts
>
> Producer agrees that from and after the effective date hereof, upon the employment of any composer, such composer shall be tendered, within a reasonable length of time a written contract. Within two weeks after such written employment contract has been fully signed, a copy thereof shall be delivered to the composer and a copy to the Guild ...."

This type of labor agreement is quite commonplace in situations involving "talent." See for example the labor agreements affecting the radio and television networks, Evans v. American

Federation of Television & Radio Artists, 354 F.Supp. 823, 828, 848 (S.D.N.Y. 1973), rev'd, Docket No. 73-1667, April 30, 1974, ____F.2d____ (2d Cir. 1974).

6. At this same meeting, the union exhibited its continued vitality as the composers' representative by voting on the terms upon which its members would work for producer employers and, in a letter to the Association dated February 2, 1972, informed the producers of those terms. (Exhibit 18 to Affidavit of Simon Rose, Esq., sworn to November 20, 1973).

7. Section 8(a)(3) [29 U.S.C. §158(a)(3)] reads in pertinent part:

> "(a) It shall be an unfair labor practice for an employer --
>
> > (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization...."

8. Judge Friendly's concurring opinion in Buckley expressed the view that constitutional claims could be raised in the District Court. But no such claim is pleaded here.

9. Although short features with sound were produced as long ago as 1922, Jolson's effort (1927) was the first complete talkie.

AFFIDAVIT OF RONALD S. ROLFE
IN SUPPORT OF PROPOSED ORDER
DISMISSING PLAINTIFFS' COMPLAINT

(Reproduced herein at pages 601a through 603a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al., Plaintiffs, -against- UNIVERSAL PICTURES, INC., et al., Defendants.	:	72 Civ. 542 (CLB) AFFIDAVIT

STATE OF NEW YORK,)
) ss.:
COUNTY OF WESTCHESTER,)

RONALD S. ROLFE, being duly sworn, deposes and says:

1. I am associated with the law firm of Cravath, Swaine & Moore, attorneys for defendant Columbia Broadcasting System, Inc., in this action, and I am familiar with all prior proceedings herein.

2. I make this affidavit in opposition to the order submitted by the other defendants herein and in support of CBS's counter-order. The only difference between the two proposed orders is that, whereas the other defendants' order provides for dismissal of the complaint "as to all defendants except Columbia Broadcasting System, Inc.", the order proposed by CBS would dismiss the complaint as to all defendants in this action.

3. No reason exists why CBS should be denied the benefit of the Court's sua sponte dismissal of the action. No separate claims have been alleged against CBS. All claims alleged against the other defendants have also

been brought against CBS. In fact, each paragraph of the complaint refers jointly to "defendants" without singling out any defendant.

4. There are only three differences in CBS's participation in this case: (1) CBS has not answered; (2) the claims against CBS were severed and stayed until May 1, 1974, and can now be prosecuted only on 30 days' written notice to CBS; and (3) plaintiff class did not move against CBS. None of these facts puts CBS in any different position than the other defendants in so far as this Court's opinion is concerned. This Court dismissed the complaint as a matter of law, relying only on the facts set forth in the complaint itself. Each of the Court's grounds for dismissal applies equally to CBS as to the other defendants.

Copyright Statute

5. CBS has contracted with composer and lyricist members of the plaintiff class for music and lyrics for television programs which it produces. That is the basis of plaintiff's complaint. As the Court has held, the "work for hire doctrine" of 17 U.S.C. § 26, is as available to the television networks as it is to the other defendants. Thus, CBS is entitled to a dismissal of the complaint against it. That is so, regardless of the fact that CBS has not answered the complaint. The complaint fails to state a cause of action on its face and as a matter of law against CBS.

Lack of Subject Matter Jurisdiction

6. The other ground for dismissal of the complaint was that primary and exclusive subject matter jurisdiction is

vested in the National Labor Relations Board. Here, no distinction can be made between the position of CBS and that of the other defendant television networks. CBS, like those networks, has

> "obligated itself to incorporate in its contracts with CLGA members the substance of provisions of the CLGA-AMPTP agreement setting minimum wage rates, providing for pension fund payments and granting rights arising from copyright ownership, but retaining the right to employ non-CLGA composers on other terms."

Similarly, like NBC and ABC, CBS was "struck" by the CLGA. The Court's holding that exclusive subject matter jurisdiction is vested in the National Labor Relations Board depends solely on the allegations in the complaint. The fact that CBS has not yet answered the complaint provides no basis for retaining a complaint against CBS which the Court has concluded it has no power to adjudicate.

7. For the reasons stated above, CBS respectfully requests that this Court enter the counter-order submitted by it and dismiss the complaint as to all defendants in this action.

Ronald S. Rolfe

Sworn to before me this)
)
17 day of July 1974.)

Ann M. Walter
Notary Public

ANN M. WALTER
Notary Public, State of New York
No. 31-4140850
Qualified in New York County
Certificate filed in Westchester County
Commission Expires March 30, 19 7 5

TRANSCRIPT OF PROCEEDINGS
OF JULY 25, 1974 BEFORE
BRIEANT, J.

(Reproduced herein at pages 605a through 633a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

ELMER BERNSTEIN,

Plaintiff,

vs. : 72 Civil 542

UNIVERSAL PICTURES, et al.,

Defendants.

----------x

Before: HON. CHARLES L. BRIEANT,JR., D.J.

New York, July 25, 1974.

APPEARANCES:

FOR THE PLAINTIFF:

BATTLE, FOWLER, LIDSTONE, JAFFIN, PIERCE & KHEEL, ESQS.;
BY: Theodore Kheel, Esq., of Counsel.

FOR CBS:

CRAVATH, SWAINE & MOORE, ESQS.
BY: Ronald S. Rolfe, Esq., of Counsel.

FOR NBC:

CAHILL, GORDON & REINDEL, ESQS.
BY: Joseph Foley, Esq., of Counsel.

FOR 20th CENTURY:

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON, ESQS.
BY: Robert R. Salman, Esq., of Counsel.

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THE COURT: Have you made any progress since you were last here, Mr. Kheel?

MR. KHEEL: I don't believe we have, your Honor. We met with counsel for CBS in an effort to reach an agreement but we were not able to reach an agreement satisfactory to both of us.

THE COURT: It's the Court's view that the issues as between the plaintiff and CBS are not before the Court and were not adjudicated. I do not want to see all of you or any of you get yourselves into a procedural morass. You would not accept for some reason my suggestion that the litigation against CBS be severed and discontinued without prejudice and dropped so that the litigation could proceed immediately to the Court of Appeals against the others, and I really am puzzled why that isn't that a reasonable and proper method to follow here, particularly if you are still engaged,as you indicated to me the other day, in possible settlement discussions, or still believe that you have a possibility or engaging in meaningful discussions.

Now, that would be the Court's preference as to how to handle it. The statute of limitations, if they are still continuing this practice, probably is not a problem for you. I gather they are still continuing to

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do what your clients believe they should do, and if your settlement breaks down, it seems to me you can pursue them again.

MR. KHEEL: Well, to be perfectly frank, we are of the opinion --

THE COURT: I assume that you are alwaysperfectly frank.

MR. KHEEL: Yes, sir, on a matter that is not strictly of the Court's concern --

THE COURT: It is of my concern because I would like to see you in a position where you could take a prompt appellate review, but I will treat with care and caution any suggestion that I make a 54(b) finding.

MR. KHEEL: We don't believe that we are in a position to reach an agreement with CBS if we agree to dismiss without prejudice.

THE COURT: You could sue them again tomorrow, couldn't you?

MR.KHEEL: Yes, we could.

THE COURT: Or you could await the outcome of this appeal and if the appeal is one way, then you would know where you stood, and if on appeal my determination is affirmed, if CBS has other facts and circumstances which would permit you to distinguish it from the other defendants,

you could still proceed against CBS.

MR. KHEEL: Your Honor, we have been reflecting on the consequences of our not agreeing to do what you suggested, which would be that there would not be a final order.

THE COURT: I'm not saying there wouldn't be, but it presents the Court with a problem to which I would have to give consideration.

MR. KHEEL: We have thought about that possibility, and in reviewing your decision, your Honor, we note that you said that this was arguably an unfair labor practice within the jurisdiction of the National Labor Relations Board.

We reviewed the decisions that have been made by the Board to date and I would point out that there are only two decisions by the National Labor Relations Board -- and I emphasize the word "Board" -- and in both of them we were held to be independent contractors which is another way of saying that --

THE COURT: Which decisions are those?

MR. KHEEL: Those decisions, your Honor -- if I may, I have them here. There was first the certificate to which you referred in your opinion as Mr. Rose's Exhibit 1 attached to his affidavit. That is the

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certificate of August 19th, 1955. That was based on a consent election. There was no decision of the Board. The Guild and the motion picture companies agreed to an election, and the certificate was issued on the basis of it.

Thereafter,the following year, I believe, the Guild filed a petition for certification as bargaining agent of the composers of American Broadcasting, Columbia Broadcasting and National Broadcasting, that being the first litigated issue that went to the National Labor Relations Board, and a decision issued, a copy of which I have before me, in which the Board said that we, the plaintiffs -- they were the same people -- were clearly independent contractors.

Now, again in 1963 --

THE COURT: Are you prepared to hand that decision to the clerk, please?

MR. KHEEL: Yes, sir.

THE COURT: All right. This is the decision and order, and attached also is the petition.

What date is the order?

MR. KHEEL: The order is January 4, 1957. It was a unanimous decision by four members of the Board.

Then there was a second decision in 1963

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which is quoted in the brief at page 37, and I also have a copy of that decision and order.

It involved the Alliance of Television Film Producers, and its employer members, and the Composers and Lyricits Guild of America in which the Board the reaffirmed a three-man unanimous decision on February 1, 1963, the decision re independent contractors.

Now, there has never been a contrary decision by the Board. There were actions by the Regional Director to which reference has been made, and there was, of course, this certification based on a consent election in which the Guild and the motion picture companies proposed a unit consisting of the composers employed by the motion picture companies excluding independent contractors.

Then, when the same composers sought a unit from the television companies, they opposed us, and in, I think, a very interesting decision that you will want to read, said clearly that we were independent contractors.

Now, we are in this posture: You have said that arguably this is an unfair labor practice, but the only outstanding decisions of the Board indicate that it is not an unfair labor practice, and that we do not have any avenue of relief at the Board.

Now, we have contemplated the possibility,

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which I would like to explore with you, of going to the Board at this point and seeking clarification because there is this possible confusion because of the consent election which in my judgment was clearly washed out by the decisions of the Board, and we would suggest the possibility that, pursuant to the decision of the Supreme Court in which Ricci v. The Chicago Mercantile Exchange, the Court might wish to retain jurisdiction of this complaint. Why don't we go to the Board and find out if we do have an avenue of relief there? All of the decisions of the Board indicate that we don't --

THE COURT: I think we are getting a little afield from the procedural problem of entering this order here.

Who else would like to be heard?

MR. ROLFE: Your Honor, I would like to be heard. I am with Cravath, Swaine & Moore here, representing CBS.

Mr. Kheel has stated that he does not think that the plaintiffs have the possibility to negotiate a settlement with CBS. I don't think that that is accurate. I think there is a substantial possibility for settlement.

THE COURT: But that's not a justiciable

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question with me, is it?

MR. ROLFE: No, it isn't.

THE COURT: And he doesn't think so, and he is entitled to his opinion.

MR. ROLFE: Because I think it would be helpful for clarification of the issues that Mr. Kheel and we have been talking about, I would like to review very briefly the history of CBS's negotiations with the plaintiffs in this lawsuit.

THE COURT: I am not sure I want to get into that because the problem which is presently before me is simply one of entering a proper order and judgment on my prior opinion, and the problem comes before me because of the fact that your client was permitted by the Court -- and by hindsight it turns out to have been improvident to defer answering the complaint while the rest of the litigants in the case brought their various motions. If I had the benefit of hindsight I never would have approved such a stipulation.

I have said to the plaintiff, "Either sever and discontinue as to CBS or make them answer the complaint." Now we all learn from experience. It's too late now to go back. A determination has been made that your client was not really before the Court. The plaintiff arguably shows that the factual circumstances as to your

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client might be different. The Court, when it made the determination, didn't know what issues you would raise or what their response to your issues would be.

Now, I cannot dismiss as to you where the plaintiffs haven't had their day in court as to your client.

MR. ROLFE: Your Honor, I would present for the Court's consideration two suggestions that show that CBS is in exactly the same position. The first is that Mr. Kheel has suggested that the Court not dismiss the action as against NBC and CBS.

THE COURT: NBC is in a little different posture.

MR. ROLFE: I believe -- and I believe Mr. Kheel would so stipulate -- that CBS is not now and has not ever been in any different position with respect to the facts concerning its relationship with the Composers and Lyricists Guild and the plaintiffs in this lawsuit than the other television networks. If he would stipulate to that, it seems to me that your Honor would have CBS before it. The plaintiffs' affidavits on their moving papers recited that the contracts with CBS were typical of those with all the defendants.

That is sufficient ground, I believe, your Honor, for the Court to enter a dismissal as against

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CBS.

MR. KHEEL: I would not so stipulate, your Honor.

First of all, the case I gave you, the 1957 case, specifically found, with regard to CBS, that the composers were independent contractors. Further, both ABC and NBC, for reasons best known to themselves, although they were parties at least at the inception of that petition, have pleaded the labor defenses.

CBS will not plead the labor defenses, your Honor; they can't.

MR. ROLFE: CBS will plead the labor defenses because the plaintiffs have held themselves out to be a labor union and calling them now a class in a class action doesn't make any difference.

THE COURT: But you see, what you are asking me to do, Mr. Rolfe, is to throw these plaintiffs out of court when you haven't even answered the complaint, and where their counsel declines to stipulate that you are comparable to the other networks it's not proper for me to attempt to coerce them into doing something they don't want to stipulate to.

And I suspect you are putting me in a situation where all I can say to both of you is, "If you can't

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stipulate something reasonably one way or another, or discontinue without prejudice, or do something to solve the procedural difficulty which you each have created for yourselves by your own deferring of your participation in this litigation, then I would simply have to leave you where you are until such time as a responsive pleading is filed and a proper motion or trial takes place."

I cannot send these plaintiffs out of court against their will, as far as concerns CBS, unless I either have a concession or astipulation. I have opened the door forboth of you as to what to do, but if you don't want to do it, it's a free country.

MR. ROLFE: I would urge that the Court dismiss CBS without prejudice in that case --

THE COURT: How can I do that?

MR. ROLFE: -- to permit the issues with respect to the other defendants to be resolved by the Court of Appeals.

THE COURT: That gives the Court of Appeals two different cases out of one, doesn't it? That is abusing, or arguably I'm abusing the right which this Court has to enter a 54(b) judgment.

MR. ROLFE: I don't believe that's so, and the reason I don't believe that's so is because CBS is either

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like the motion picture defendants or it's like the television networks. It can't be like neither of the two types of defendants.

THE COURT: Well, Mr. Kheel doesn't agree with that statement. I can't decide it today.

MR. ROLFE: Mr. Kheel would appear not to be familiar with the circumstances of the negotiations between his client and the television networks. And, you know, CBS is perfectly prepared to answer, to file a motion to dismiss, and to file a counterclaim, as I have indicated to your Honor, because we believe very strongly that if in fact these plaintiffs are independent contractors, as concerns CBS, they were improperly attempting to coerce CBS to deal collectively, and they have continued to do that in the guise of this class action. They want a contract which they can hold up to each of the members of the class, which is coexistent with the members of the union, and say, "This is your agreement with CBS," and that is where the negotiations broke down. CBS wants to make its contracts with these composers and lyricists on an individual case-by-case basis. It does not want to enter into any mandatory agreement which the Court would then enforce or the members of the class could then come into this court and say that CBS is violating its

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agreement with the class.

MR. KHEEL: Your Honor, we had an interim agreement with CBS which they entered into with these plaintiffs, and it was on that basis that we agreed to defer their answers.

THE COURT: I went along with you on that but I shouldn't have permitted it because, you see, now it's holding up and separating into two packages rather than one a litigation in which originally all the issues could have been reached.

MR. KHEEL: May I respectfully suggest that perhaps we can resolve our mutual problems in light of the Supreme Court's decision in Ricci v. Chicago Mercantile Exchange, 409 U.S.289,inwhich the Supreme Court said, in a case involving an alleged violation of the antitrust laws, that the antitrust court should retain jurisdiction while it was determined whether the administrative agency was the appropriate agency for relief, and that while this matter is being held without the issuance of a final order, we would go to the NLRB and we would respectfully ask that the defendants cooperate with us and ascertain whether in fact there is any relief we can get there because we don't think there is.

THE COURT: Apparently there is no record of.

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any petition for certiorari thathas been filed in the Buckley case. My chambers attempted to find that out. Of course, the Supreme Court has been quite busy the last few days and we were unable to get a definitive answer, but the tentative information we received was that there had been nothing filed in the nature of a petition for certiorari, and if that happened, of course you might get a very prompt determination.

All right, sir.

MR. SALMAN: My name is Robert Salman of Phillips, Nizer representing a number of motion picture companies -- a majority of them.

I would respectfully request, again, your Honor, that you sign the order that we have submitted on behalf of all of the defendants that you said were to be dismissed.

I would also appreciate just a brief moment to respond to Mr. Kheel's suggestion which we had no advance notice about before we heard it in court this morning.

We think that, consistent with your Honor's opinion, the suggestion that the Ricci case applies, is not accurate; that such a referral to the NLRB would be inappropriate here.

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THE COURT: They didn't do it in the Buckley case, did they?

MR. SALMAN: No, sir.

THE COURT: And that's a First Amendment question, a constitutional law question. All you have here is an antitrust suit which Congress could appeal and modify tomorrow if they weren't so busy.

MR. SALMAN: Exactly.

THE COURT: Judge Friendly incidentally didn't agree with that part.

MR. SALMAN: No, he didn't.

I believe that the reference under Ricci that is suggested would be improper.

And just another brief word. Mr. Kheel is attempting to rearque some of the merits. I just want to make an observation on that.

These two cases that were decided before the NLRB were fully briefed and discussed in this court, and our position is quite clear that the certificate issued on August 19, 1955, under which the motion picture defendants that we represent and the union operated for two decades, clearly set forth that there was to be a collective bargaining process subject to the rules that govern collective bargaining agreements.

This attempt now to distinguish, at least insofar as the defendants I represent, is just not applicable to the situation.

THE COURT: He didn't really address himself to your clients, did he?

MR. SALMAN: I hope not.

THE COURT: I think he was talking about the television film producers; the Alliance of Television Film Producers, he referred to.

MR. ROLFE: CBS is not a member of that organization.

MR. KHEEL: As well as the ABC case in which you were a party.

MR. ROLFE: As well as the other two networks.

MR. SALMAN: None of our defendants were.---

MR. FOLEY: I would like briefly to state that the case to which Mr Kheel referred, the petition before the NLRB for certification against NBC, CBS and ABC, was not resolved on the merits as to NBC. The petition was dismissed as to NBC and ABC on the grounds that they did not have any relations, whether employee or independent contractor, with the composers at the time the petition was filed, so there was no resolution of the issue.

I would also state that I am in agreement with

Mr. Salman that at least partof Mr. Kheel's position today is an attempt to reargue the motion. He has not in fact filed such a motion.

THE COURT: Well, I will hear him within reason. I have already heard him. I don't think you need to go into that in any depth. I think I am confronted with a procedural problem this morning as to how I deal with the difficulties inherent in entering an order here with CBS. The issues between the plaintiffs and CBS were not clearly before the Court, and I can't get a stipulation that they were, and I can't get them severed and discontinued and dropped as parties without prejudice, so I'm left with a difficulty where I will have to sign an order which preserves CBS's rights and then you will have to file your answer, Mr. Rolfe, and we will just have to deal with it and I am not even in a position at this time where I can definitively accept or reject an application for a 54(b) final judgment for the motion picture producers. They may or may not be entitled to it depending on what's left of this case for this Court to dispose of.

MR. KHEEL: We would not object if you signed the order proposed by the defendants --

THE COURT: Which defendants? They all proposed orders.

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MR. KHEEL: The motion picture defendants and NBC.

-- and if you did not issue under 54 (b) which would keep the complaint alive and give us the opportunity to go to the NLRB.

Now, this case is distinguishable from Buckley in that the NLRB has ruled it was arguably a matter in the Buckley case whether Mr. Buckley could get his complaint adjusted.

THE COURT: Mr. Buckley had no privity with the NLRB ruling. He had never been heard on the subject. He claimed he was not a member except under duress, and the defendants didn't dispute that.

MR. KHEEL: These defendants and plaintiffs have been before the NLRB, and the only decisions hold that the NLRB doesn't have jurisdiction.

Now, there is confusion apparently because of this consent election. That iswhat the certificate was based on.

THE COURT: Well, you know, the NLRB can't consent to something that's beyond its jurisdiction any more than this Court can.

MR. KHEEL: Right, but thereafter the NLRB ruled contrary to the consent election which the parties

gave them.

THE COURT: We are getting a little bit afield. All that I am really prepared to hear today is what must be done to enter a proper order on the Court's decision. Everybody has been heard on that?

I may take a short recess and permit you an opportunity to talk with each other and see if you still can't do something practical.

MR. ROLFE: I would ask the Court, your Honor, to ask Mr. Kheel whether he would be amenable, during the time period that the defendants, except for CBS, and the plaintiffs before the NLRB, to have CBS stayed and to have the proceedings against it stayed pending a decision of the NLRB as it applies to the other television networks and the other defendants.

THE COURT: I wouldn't be agreeable to that. I'll tell you why. That would delay these other litigants on the defense side of the case from having their day, and it would delay the plaintiffs from having their day in the Court of Appeals. It would just prolong and lengthen the history of this litigation.

MR. ROLFE: I am trying to avoid the proliferation of papers, your Honor, because it's CBS's belief that we are in no different position than the other television

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networks.

THE COURT: That may turn out to be so, but I don't think I can determine that today in the absence of a stipulation or agreement.

MR. SALMAN: Your Honor, just one brief final comment. It's the position of the motion picture defendants that the order that we submitted should be signed, that Rule 54(b) would not permit finality then, that if Mr. Kheel and CBS counsel cannot get together, then they can very quickly, as Mr. Rolfe has represented to the Court, answer, make the motion, and your Honor can decide very promptly.

In that interim period we would most vigorously oppose a Ricci-type reference that Mr. Kheel has suggested.

THE COURT: You see, that would occur unilaterally. If this case drifts along, they can go the Ricci route without any help from you and from the Court. The doors are open down there to them.

MR. SALMAN: Mr. Kheel's petitions to the NLRB are made and withdrawn with regularity in this case, but as long as your Honor --

MR. KHEEL: Amen.

MR. SALMAN: -- maintains his position, we are quite happy.

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THE COURT: But you see, this is a 1972 case, an early 1972 case. The Court has an interest in concluding this litigation and finishing it up, and getting it either dropped, settled, tried, or submtted on appeal.

I have done what I thought was right with the motions here I have done the best I could with them. I welcome review of this particular matter in the Court of Appeals, but I do believe that the principal authority upon which I relied was wrongfully decided. I made that all clear to you the other day when you were here, but it is my duty to follow the decided case law to the best of my ability because that is the way I read it. And Iwould like to see you all go pursue that, but I can't send it up in bits and pieces, and I can't dispose of CBS in the absence of agreement on the present state of the record here. That's about all there is to it, gentlemen.

MR. SALMAN: We agree completely.

THE COURT: Is there anyone who hasn't been heard who would like to get his contribution before the Court?

MR. KHEEL: No, sir. We would like to renew our request that the defendants, the motion picture defendants, and CBS also, cooperate with us in going to the NLRB.

THE COURT: But you see, I can't compel that.

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Of course, you can renew your request and you can address it to their conscience, but I cannot compel them to do that any more than I can compel you to get CBS out of this litigation and take up the main issues to the Second Circuit which, of course, is what I really would like to see you do, but I wouldn't press you to do that. That would be improper.

MR. KHEEL: We would rather go first to the NLRB, and we will go there immediately, and we will go there unilaterally. It would be a lot better in the interest in promptly disposing of this case ifwe had their cooperation.

THE COURT: Why don't you lean on Mr. Rolfe during the recess. You are a good negotiator.

MR. KHEEL: I have to lean on him to lean on his fellow defendants.

MR. SALMAN: Your Honor, I do not want to prolong this unnecessarily, but I would say that Mr. Kheel began this whole controversay by going to the NLRB, but then he withdrew his charge against us before the NLRB when he thought that it would be more propitious to be in this courthouse.

Now, after your Honor's decision he urges us to go back to the NLRB for some clarification of a point

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that we think is quite clear in your opinion, and we think as a matter of conscience we should not be asked to do that.

THE COURT: You are all at an impasse with me today and the reason you are is the direct fault of the Court because under the individual calendar system I should have called in CBS and said, "File your answer. I don't care what the stipulation says. File it or move." My failure. And it won't happen again, gentlemen.

We will take a short recess.

(Recess.)

THE COURT: If there is nothing that anyone wishes to add, I would just take the matter under submission and see what type of order should be entered.

MR. SALMAN: I would like to add one further observation, having spoken to my office.

I don't represent this to be final on the matter by any means, but Simon Rose and I believe that although the law certainly is not clear, where there are 14 defendants left in the case, and 13 would be dismissed, we think that that would probably be sufficient finality for a 54(b) order to be issued to permit this to go up right away, if the plaintiffs so choose. And they have not indicated one way or another to us what is their intention.

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MR. KHEEL: Our intention is to go to the NLRB, and we invit[e] you to come with us.

MR. SALMAN: We respectfully decline another trip to the NLRB, Mr. Kheel.

THE COURT: Well, he can go whether or not you accept the invitation.

MR. SALMAN: He certainly can.

MR. FOLEY: Your Honor, on the question of the finality of the order, I would agree with Mr. Salman. In fact, we would request that you enter it as a final order. I don't believe that that prejudices the rights of either CBS or the plaintiffs.

The matter can then be determined by our Court of Appeals, and that decision would then clearly resolve the matter one way or the other.

THE COURT: Well, they would still face the possibility that CBS would be coming up later on on a separate appeal. That's the difficulty with that. It gives piecemeal appeals.

MR. FOLEY: The Court of Appeals perhaps might face that possibility but it is not necessarily reasonable to allow 13 defendants to expose them to the possibility that after the matter has been disposed of in their favor, that they ought to sit around for perhaps years while the

limitation on the right of the plaintiffs to appeal is stayed because there is no order, so that in theory CBS could go to trial with the plaintiffs and then we could get a final order. I don't think that it is necessary under the circumstances to force the other defendants to wait for that length of time.

In the event that the Court of Appeals were to reverse your Honor's order, of course then the whole matter would be back here, and CBS and everybody else would be in the same position.

If the Court of Appeals sustained your Honor's order at that time, it's simple enough for CBS to file a motion asking your Honor to dismiss for lack of jurisdiction citing the facts of this case and citing the decision of the Court of Appeals.

THE COURT: CBS's facts may be different; Mr. Kheel asserts that they are, and I have every reason to take his assertion as being made in good faith. If he didn't say that, I would sign CBS's order right now.

MR. FOLEY: But if CBS's facts are different, then different issues are raised for purposes of the appeal so that the Court of Appeals would have two questions in any event.

THE COURT: That's correct.

MR. SALMAN: Also, your Honor, Mr. Kheel doesn't even indicate that he would go forward to the Court of Appeals, and CBS has no objection to the order being signed as we have just suggested -- Mr. Foley and myself.

MR. KHEEL: We do not believe that we should be compelled to appeal piecemeal, and --

THE COURT: There are two conflicting policies that have to be resolved by the Court. One is the policy against piecemeal appellate review, and the other is the equitable considerations where, as noted, a group of somewhat dissimilar defendants -- I think the motion picture people, because of their factual history and background, are dissimilar somewhat from the networks -- have to be held in abeyance. While I cannot say with certainty when finality would attach to the remaining defendant, I couldn't predict whether by October or November this case might still be in limbo.

MR. KHEEL: We are ready to proceed with CBS as rapidly as possible. We are ready to go to the NLRB.

THE COURT: Well, that you can certainly do.

MR. KHEEL: We will do that, your Honor, and we would object, however, to putting the burden on us to proceed with piecemeal appeal.

THE COURT: Well, I would have to give that some

thought because there are conflicting policies here which, in the absence of some stipulation or agreement, I will simply have to weigh and resolve as best I can.

MR. ROLFE: Your Honor, the way that the matter can be resolved with no prejudice to anyone is precisely the way your Honor suggested the last time we were here and today: a dismissal without prejudice.

THE COURT: You see, I agree with you, but there is nothing compulsive about it, and your adversary, for reasons of his own, maybe tactical, doesn't wish to do that.

MR. ROLFE: It seems to me that tactical reasons in a situation where judicial burden is at stake are not sufficient to outweigh the compelling necessity that something be done, and the only factual matter that Mr. Kheel can point to that separates CBS from the rest of the television networks is that the decision of the NLRB back in 1955 only read on CBS.

The factual history subsequent to that, Mr. Kheel would concede, is exactly the same.

Would you not, Mr. Kheel?

MR. KHEEL: With one additional factor, namely, that you will not plead the labor defenses, that you have told us that consistently.

MR. ROLFE: I have never said that.

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MR. KHEEL: You have said repeatedly that we are independent contractors and that the terms on which we have been discussing settlement are so predicated.

THE COURT: I can't determine the merits today in the present posture of the record -- I think that's quite clear -- on what is proper tactics and what is not. Every man is his own Pope, and you will have to all resolve that among yourselves.

MR. SALMAN: Your Honor, as you said several times now, and as the record substantiates, the motion picture company defendants clearly have a very readily definable relationship with the union. It has been that for two decades, and I respectfully request that at the very least the final order be entered as to the motion picture defendants, and Mr. Kheel's counter offer submitted to your Honor included that very situation. And I think that it is only proper --

THE COURT: Who represents ABC and NBC?

MR. FOLEY: I represent NBC, your Honor. I don't believe there is anyone here on behalf of ABC this morning, your Honor.

MR. SALMAN: Hawkins, Delafield & Wood represent them.

THE COURT: Do you agree with the suggestions

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I just made?

MR. FOLEY: Yes, your Honor. I believe your Honor's decision applies to NBC and that we are entitled to a dismissal.

MR. KHEEL: We object to a piecemeal appeal.

THE COURT: I will have to take the whole matter under advisement, gentlemen.

All right, the decision is reserved.

MR. KHEEL: Thank you, your Honor.

(Hearing concluded.)

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al.,	:	
Plaintiffs,	:	72 Civ. 542-CLB
-against-	:	
UNIVERSAL PICTURES, INC., et al.,	:	SUPPLEMENTAL MEMORANDUM
Defendants.	:	

Brieant, J.

In our memorandum decision of June 28, 1974, which directed that an order be settled thereon "dismissing the complaint", we addressed generally the questions of pre-emption and want of subject matter jurisdiction. We observed in our decision (fn. 4):

> "The parties agree that this motion [i.e., plaintiffs' motion to strike affirmative defenses] is not addressed to CBS because by stipulation CBS has not yet answered and its defenses obviously are not yet known."

Defendant Columbia Broadcasting System, Inc. ("CBS") has presented a proposed order which will dismiss the complaint as to all defendants. In support thereof, was submitted the

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affidavit of Ronald S. Rolfe, Esq., sworn to July 17, 1974. Based on that affidavit, and in reliance on the transcripts of our hearings held with respect to the form of order to be entered, which were held July 17 and 25, 1974, the procedural difficulties presented by CBS' failure to move or answer seem more apparent than real.

While our June 28, 1974 memorandum may be somewhat ambiguous on the subject, upon reflection, there appears to be no valid reason why our dismissal of the complaint on the ground of preemption of the controversy under the National Labor Relations Act should not enure also to the benefit of CBS.

As Mr. Rolfe's affidavit points out, there is no factual distinction between the situation of CBS and that of the other broadcasting defendants. Nomenclature used by CBS, i.e., "independent contractor", with respect to plaintiffs is irrelevant. As pointed out in footnote 4 of our memorandum, if plaintiffs are in truth independent contractors, the joint coercive action or strike conducted by CLGA against all three network defendants was arguably unlawful under the Antitrust Laws, and if the composers are "labor", and accordingly entitled to conduct themselves in such fashion, arguably the issues in this lawsuit are preempted by the Act.

SUPPLEMENTAL MEMORANDUM OF BRIEANT, J.

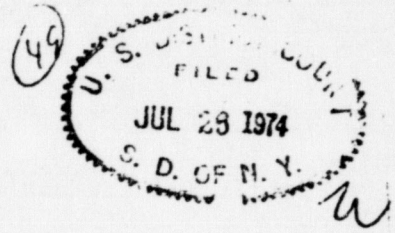
Under the circumstances, to require CBS to answer the complaint and move for relief would seem to be a useless act and the complaint should be dismissed as to all.

The proposed counterorder submitted by the attorneys for CBS has been signed and filed.

Dated: New York, New York
July 26, 1974

Charles L. Brieant Jr.

CHARLES L. BRIEANT, JR.
U.S.D.J.



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ELMER BERNSTEIN, et al., Plaintiffs, -against- UNIVERSAL PICTURES, INC., et al., Defendants.	72 Civ. 542 (CLB) ORDER

Plaintiffs having moved this Court for an order pursuant to Rules 12(f), 56 and 65 of the Federal Rules of Civil Procedure for an order striking or, in the alternative, granting summary judgment dismissing defendants' affirmative defenses based on the labor exemption of the antitrust laws and the claim of primary and exclusive jurisdiction by the National Labor Relations Board and for injunctive relief, and the Court having heard the argument of counsel and being fully advised, it is

ORDERED,

1. That plaintiffs' motion be and the same hereby is in all respects denied;

2. That the complaint be and the same hereby is dismissed pursuant to Rule 12(h)(3) for lack of subject matter jurisdiction; and

3. That this Order is without prejudice to the rights of those composers, if any, whose claims arose before

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ORDER

July 5, 1935 and are not time barred, and that all such persons, if any, be and the same hereby are excluded from the class herein.

Dated: New York, New York
~~July 16, 1974~~
JUL 26 1974

Charles L. Brieant Jr.
United States District Judge

STATE OF NEW YORK
COUNTY OF NEW YORK

being duly sworn deposes
and says: On , 19 I served the
within record on appeal brief appendix on
the attorney for the
respondent by leaving

STATE OF NEW YORK
COUNTY OF NEW YORK

JAMES GILHOOLY being duly sworn deposes and says: On November 25th, 1974 I served the within ~~record on appeal brief~~ appendix on Kramer, Levin, Nessen, Kamin & Moore, attorneys for the ~~respondent~~ appellant by leaving ~~mailing~~ ~~three copies~~ one copy thereof at his office located at One Chase Manhattan Plaza, New York, New York 10005

James J. Gilhooly

Sworn to before me this 25th day of November 1974

Theresa Corless

THERESA CORLESS
Notary Public, State of New York
No. 4518917
Qualified in Bronx County
Term Expires March 30, 1976

STATE OF NEW YORK
COUNTY OF NEW YORK

JAMES GILHOOLY being duly sworn deposes and says: On November 25th, 1974 I served the within ~~record on appeal brief~~ appendix on Cahill, Gordon, Sonnett, Reindel & Ohl, attorneys for the ~~respondent~~ appellee by leaving ~~mailing~~ ~~three copies~~ one copy thereof at his office located at 80 Pine Street, New York, New York 10005

James J. Gilhooly

Sworn to before me this 25th day of November 1974

Theresa Corless

THERESA CORLESS
Notary Public, State of New York
No. 4518917
Qualified in Bronx County
Term Expires March 30, 1976

STATE OF NEW YORK
COUNTY OF NEW YORK

BERT MYERS being duly sworn deposes and says: On November 25th, 1974 I served the within ~~record on appeal brief~~ appendix on Simpson, Thacher & Bartlett the attorney for the ~~respondent~~ appellees by leaving ~~mailing~~ ~~three copies~~ One copy thereof at his office located at One Battery Park Plaza New York, New York 10004

Gulf & Western Industries, Inc., MCA Inc., Paramount Pictures Corp. & Universal City Studios, Inc.

Bert Myers

Sworn to before me this 25th day of November, 1974

Theresa Corless

THERESA CORLESS
Notary Public, State of New York
No. 4518917
Qualified in Bronx County
Term Expires March 30, 1976

STATE OF NEW YORK
COUNTY OF NEW YORK

BERT MYERS being duly sworn deposes and says: On November 25th, 1974 I served the within ~~record on appeal brief~~ appendix on Hawkins Delafield & Wood the attorney for the ~~respondent~~ appellees by leaving ~~mailing~~ ~~three copies~~ One copy thereof at his office located at 67 Wall Street New York, New York 10005

American Broadcasting Companies, Inc.

Bert Myers

Sworn to before me this 25th day of November, 1974

Theresa Corless

THERESA CORLESS
Notary Public, State of New York
No. 4518917
Qualified in Bronx County
Term Expires March 30, 1976

STATE OF NEW YORK
COUNTY OF NEW YORK

JAMES GILHOOLY being duly sworn deposes and says: On November 25th, 1974 I served the within ~~record on appeal brief~~ appendix on Shea, Gould, Climenko, Kramer the attorney for the ~~respondent~~ appellee Metro-Goldwyn-Mayer, Inc. by leaving ~~mailing~~ ~~three~~ one ~~copies~~ copy thereof at his office located at 330 Madison Avenue New York, New York 10017

James J Gilhooly

Sworn to before me this 25th day of November, 1974

Theresa Corless

THERESA CORLESS
Notary Public, State of New York
No. 4518917
Qualified in Bronx County
Term Expires March 30, 1976

STATE OF NEW YORK
COUNTY OF NEW YORK

BERT MYERS being duly sworn deposes and says: On November 25th, 1974 I served the within ~~record on appeal brief~~ appendix on Donovan, Jessup, Newton, Irvine the attorneys for the ~~respondent~~ appellee Walt Disney Productions, Inc. by leaving ~~mailing~~ ~~three~~ one ~~copies~~ copy thereof at his office located at 30 Rockefeller Plaza New York, New York 10020

Bert Myers

Sworn to before me this 25th day of November 1974

Theresa Corless

THERESA CORLESS
Notary Public, State of New York
No. 4518917
Qualified in Bronx County
Term Expires March 30, 1976

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Appendix

IS HEREBY ADMITTED.

DATED: Nov 22, 1974

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